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PART I

(Part II begins on page 14919)

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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How To Find U.S. Statutes and United States Code Citations

[Second Revised Edition—1971]

This useful guide is designed to enable the user to obtain—quickly and easily—up-to-date and accurate citations to the United States Statutes at Large and the United States Code.

It contains typical legal references which require further citing. The official published volumes in which the citations may be found are shown alongside each reference—with suggestions as to the logical sequence to follow in using them. Additional finding aids, some especially useful in citing current legislation, also have been included. Examples are furnished at pertinent points and a list of references, with descriptions, is carried at the end.

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1972, and specifies how they are affected.

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Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 542, Amdt. 2]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* The provision in paragraph (b) (1) of § 910.842 (Lemon Regulation 542, 37 F.R. 13971) during the period July 16, through July 22, 1972, is hereby amended to read as follows:

§ 910.842 Lemon Regulation 542.

* * * * *

(b) *Order.* (1) * * * 320,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 21, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-11533 Filed 7-25-72;8:47 am]

[Lime Reg. 6, Amdt. 2]

PART 911—LIMES GROWN IN FLORIDA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 37 F.R. 10497), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Florida Lime Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of limes available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Lime Regulation 6 (37 F.R. 13971). The marketing picture now indicates that there is a greater demand for limes than existed when the regulation was made effective, due to hot weather. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of limes to fill the current market demand thereby making a greater quantity of limes available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of limes grown in Florida.

(b) *Order, as amended.* The provision in paragraph (b) (1) of § 911.406 (Lime Regulation 6, 37 F.R. 13971) is hereby amended to read as follows:

§ 911.406 Lime Regulation 6.

* * * * *

(b) *Order.* (1) The quantity of limes grown in Florida which may be handled during the period July 16, 1972, through July 22, 1972, is hereby fixed at 24,000 bushels.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 21, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-11579 Filed 7-25-72;8:51 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1427—COTTON

Subpart—1972-Crop Supplement to Cotton Loan Program Regulations

Correction

In F.R. Doc. 72-9742 appearing at page 12927 of the issue of Friday, June 30, 1972, and corrected on page 13791 of the issue of Friday, July 14, 1972, the following changes should be made:

1. In the table in § 1427.101, the entry in the right-hand column for Elgin, in Bastrop County, now reading "19.50", should read "19.55"; the entry for Fauna, in Harris County, now reading "19.65", should read "19.60"; the entry for Wichita Falls, in Wichita County, now reading "19.50", should read "19.55"; and the entry for Winters, in Runnels County, now reading "19.55", should read "19.50".

2. In the top row of the table in § 1427.102, the ninth figure from the left, originally reading "11/16" and corrected to read "1½", should read "1⅜".

3. In the same table the sixth figure from the bottom in the right-hand column, now reading "+20", should read "+25".

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER A—GENERAL REGULATIONS

[FHA Instruction 402.1]

PART 1803—SUPERVISED BANK ACCOUNTS

Joint Survivorship Account; Deletion

In § 1803.6(a)(6), Title 7, CFR (35 F.R. 16401), Subdivision (i) reading "For joint survivorship accounts, the names of both the husband and wife will be entered on the deposit slip," is deleted.

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1983; sec. 510, 63 Stat. 437, 42 U.S.C. 1480; sec. 4, 64 Stat. 100, 40 U.S.C. 442; sec. 602, 78 Stat. 528, 42 U.S.C. 2942; sec. 301, 80 Stat. 379, 5 U.S.C. 301; Order of Director, Office of Economic Opportunity, 29 F.R. 14764; Order of Acting

Secretary of Agriculture, 36 F.R. 21529; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 F.R. 21529.)

Dated: July 14, 1972.

J. R. HANSON,
Acting Administrator,
Farmers Home Administration.

[FR Doc.72-11582 Filed 7-25-72;8:51 am]

SUBCHAPTER C—LOANS PRIMARILY FOR PRODUCTION PURPOSES

[FHA Instructions 441.1, 441.3]

PART 1831—OPERATING LOANS

Subpart A—Operating Loan Policies and Authorizations

Subpart B—Operating Loan Processing

On Tuesday, November 30, 1971, a proposal was published on pages 22754 and 22761 of the FEDERAL REGISTER to revise Subparts A and B of Part 1831 of Title 7 of the Code of Federal Regulations. The revision of Subpart A as proposed, was to:

1. Eliminate the authority to make participation loans;

2. Under loan purposes:

(a) Provide that Operating loans may be authorized for the payment of FHA Operating loan interest-only installments;

(b) Provide that FHA may refinance a debt incurred under the terms of a formal subordination agreement pursuant to § 1871.11 of this chapter under certain conditions specified even though the amount advanced may exceed the borrower's equity in the chattel; and

(c) Authorize loans to make partial payments on grain or other storage and drying facilities under certain conditions specified.

3. Revise the policy regarding repayment schedules on Operating loans. The revision of Subpart B as proposed, removes the authority to process participation loans and provides requirements and procedures for the preparation of the revised Form FHA 441-1, "Promissory Note." Interested persons were afforded the opportunity to participate in the rule making through the submission of comments. No comments have been received and the proposed revisions are hereby adopted without change, except for clarification and minor editorial changes, and are effective on the date of their publication in the FEDERAL REGISTER (7-26-72).

Dated: July 21, 1972.

DOLORES M. KAUFMAN,
Acting Chief, Organization and Directives, Management Branch, Farmers Home Administration.

Subpart A—Operating Loan Policies and Authorizations

AUTHORITY: The provisions of this Subpart A issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Order of Acting Secretary of Agriculture, 36 F.R. 21529, Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 F.R. 21529.

Subpart A—Operating Loan Policies and Authorizations

§ 1831.1 General.

This subpart is supplemented by Parts 1890, 1890a, 1890c, 1890f, 1890k, and 1890r of this chapter, modified by Subpart B of Part 1810 of this chapter, and supplemented and modified by Part 18901 of this chapter. This subpart prescribes the policies and authorizations of the Farmers Home Administration (FHA) for making operating loans to farmers, including ranchers and former farmers obtaining subsequent loans after converting their entire farming operations to recreational enterprises.

§ 1831.2 Objectives.

The basic objectives of the FHA in making operating loans, supplemented as feasible by credit from other sources, are to assist eligible farmers and ranchers to make efficient use of their land, labor, and other resources, carry on sound and successful operations on the farm, and afford the family an opportunity to have a reasonable level of living. The operations include establishment or enlargement of recreational and other nonfarm enterprises on the farm to supplement the farm income. These objectives will be accomplished through the extension of operating loans, supplemented by credit from other sources, and by supervisory assistance.

§ 1831.3 Supervisory assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the FHA in accordance with Subpart A of Part 1802 of this chapter. Such assistance consists of farm, home, and nonfarm or recreation planning, recordkeeping, analyzing the farm and any recreational or other nonfarm enterprises, and giving management advice.

§ 1831.4 Definition of a family farm.

The term "farm" includes a tract or tracts of land and improvements considered to be farm property, operated by the applicant and used or to be used in the production of crops or livestock, including the production of fish under controlled conditions. The term "farm" also includes any such land and improvements and facilities used in a recreational or other nonfarm enterprise.

(a) *Family farm.* A family farm is defined as one that will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence, one that will provide substantial income by itself and which, together with any other dependable income, will enable the family to pay necessary family and other operating expenses, including maintenance of essential chattel and real property and pay debts, and one for which the operator and his immediate family provide the management and major portion of the labor including any recreation or nonfarm enterprise, except during seasonal peakload periods.

(b) *Recreational enterprises.* Loans may be made to operate, improve, establish, or enlarge recreational enterprises or to convert a part or all of the farming operation to such enterprises providing it is not feasible to make a recreation loan (RL) for this purpose. Subsequent loans for recreation purposes also may be made to borrowers who previously have converted their entire farming operation to a recreational enterprise(s).

(c) *Nonfarm enterprises other than recreational enterprises.* Loans may be made to farmers who will also continue farming operations to operate, improve, establish, or enlarge a nonfarm enterprise(s) needed to supplement farm income. Such enterprises must be located or headquartered on the farm. Nonfarm enterprises involving services such as delivery, custom, construction, or repair services must be headquartered on the farm. Loans will be made only for enterprises which produce goods or services for which there is a need that is not being adequately supplied by others in the community and for which there is a reasonably reliable market.

§ 1831.5 Eligibility requirements.

To be eligible for an operating loan each applicant must:

(a) Be a citizen of the United States.

(b) Possess legal capacity to incur the obligations of the loan. State requirements will be issued by the State Director with the advice of the Office of the General Counsel (OGC).

(c) Be an individual who has a farm background, except for veterans as defined in Part 1801 of this chapter, and either training or farm experience and any other training or experience sufficient to assure reasonable prospects of success in the proposed operation. In addition, the applicant must be engaged in farming to qualify for a loan to convert his entire farming operation into a recreational enterprise.

(1) An applicant who is already earning sufficient income to have a reasonable standard of living is not eligible for a loan, even though he meets other eligibility requirements, unless the County Supervisor and the County Committee are reasonably certain that after the applicant's planned enterprise (including recreational or other nonfarm enterprise) is fully developed, he will not

engage in other employment to supplement his income, except to the extent necessary to enable his family to have a reasonable standard of living.

(d) Possess the character, ability, and industry necessary to carry out the proposed operation and honestly endeavor to carry out the undertakings and obligations required of him in connection with the loan.

(e) Be unable to obtain sufficient operating credit elsewhere to finance his actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which he resides for loans for similar purposes and periods of time. The applicant's equity in real estate, chattels, and other assets should be considered in determining his ability to obtain credit from private and cooperative sources.

(f) After the loan is made, be operating not larger than the equivalent of a family farm as an owner or tenant.

(g) Be able to meet his major needs for operating credit within the indebtedness limitation for operating loans during the period that such loans likely will be needed, except in cases in which additional financing on a contractual or equally definite basis is available.

§ 1831.6 Veterans' preference

Veterans, as defined in Part 1801 of this chapter, will be given preference. When it appears that available funds will be inadequate to meet the needs of all applicants, the applications on hand from veterans will be processed first.

§ 1831.7 Certification by County Committee.

Before an operating loan is approved, the County Committee will certify on Form FHA 440–2, "County Committee Certification or Recommendation," that the applicant is eligible for a loan in accordance with the provisions of § 1831.5. In addition, the County Committee will establish the maximum amount of credit which may be extended, under the certification, to meet the actual needs of the applicant during his crop or operating year. The crop or operating year for each applicant will be established in accordance with the provisions of Subpart B of Part 1802 of this chapter. The maximum amount of credit established by the County Committee will not necessarily represent the amount which actually will be loaned. For this reason, and to avoid possible misunderstanding, the applicant will not be notified of the maximum credit as established by the County Committee.

§ 1831.8 Supplementing FHA operating loans with other credit.

(a) *Policy.* (1) Credit from other reliable agricultural credit sources will be obtained to the maximum extent possible to supplement FHA operating loans. This is necessary in order to serve as many eligible operating loan applicants and borrowers as possible with the loan funds available.

(2) Funds ordinarily will not be included in either initial or subsequent operating loans for purposes for which credit can be obtained from other agricultural credit sources on terms which are generally available to other farmers in the community.

(3) Each new applicant or present borrower who applies for an operating loan will be required to meet as much of his needs as possible from other agricultural credit sources by open account, note only, liens, feeder agreements, or other contractual basis.

(4) When credit for annual operating and family living expenses is not available from other agricultural credit sources on any other satisfactory basis, FHA may:

(i) Take a lien on chattels and crops subject to the lien of another creditor, as authorized in § 1831.12.

(ii) Subordinate its liens on chattels and crops as authorized in § 1871.11 of this chapter.

(b) *Relationships with other lenders and suppliers.* (1) County Supervisors will keep appropriate agricultural lenders and suppliers currently informed concerning FHA policies with respect to loan making, cooperation with other lenders, and subordinations, supervision, and servicing, including the distribution of income available for debt payments, and graduation of borrowers. However, FHA employees may not guarantee, personally, or on behalf of FHA, repayment of advances from other credit sources.

(2) Other agricultural lenders and suppliers will be requested and encouraged to furnish as much of each applicant's or borrower's essential needs as possible with the balance being supplied with operating loan funds.

(3) The County Supervisor will require applicants and borrowers, as appropriate, to contact other lenders and suppliers and obtain as much of their needs as possible from those sources. Such applicants and borrowers should request other lenders and suppliers to indicate the amounts and terms of operating-type credit which will be made available to them. The amount and purposes of such credit will be documented and clearly identified in Form FHA 431–2, "Farm and Home Plan," or Form FHA 431–4, "Business Analysis—Nonagricultural Enterprise."

(4) When operating credit is to be obtained from other sources, the County Supervisor should have reasonable assurance that the credit from other sources will be available when needed and that significant additional amounts will not be extended by such creditors except with the concurrence of FHA.

(c) *Documentation when applicants and borrowers are unable to obtain credit for operating expenses from other agricultural lenders or suppliers.* When FHA operating loans are to be made which include funds for annual operating and family living expenses, the County Supervisor will document in the running record the efforts which were made to obtain such credit from other sources including the names of the lenders or suppliers contacted and the reasons it could not be obtained. When appropriate, the County Supervisor will check on evidence presented by the applicant or borrower that he cannot obtain credit elsewhere.

§ 1831.9 Loan purposes.

Subject to the loan limitations and special requirements set forth in § 1831.10, operating loans may be made for:

(a) Purchase of livestock, poultry, fur bearing and other farm animals, fish, bees, farm equipment, and paying costs incident to reorganizing the farming system for more profitable operation and for other farm needs, including equipment to be utilized in the development of forest lands, and the production and harvesting of forestry products.

(b) Purchase of animals, birds, fish, tools, equipment, facilities, furnishings, inventories, and supplies, and paying costs incident to reorganizing, establishing or enlarging a nonfarm or recreational enterprise.

(c) Purchase of an undivided interest in the items included in paragraphs (a) and (b) of this section which would be operated under a joint arrangement or as a group service.

(d) Purchase of feed, seed, fertilizer, insecticides, farm and other supplies, including inventory; the repair or rental of equipment; and payment of essential operating expenses for the farm, forestry, recreation or other nonfarm enterprise; or paying bills incurred for any items in this paragraph for the crop or operating year being financed.

(e) Payment of customary and equitable cash rent or cash charges for the use of essential buildings, pasture, crop, hay or other land, and grazing permits or bills for such purposes for the operating or crop year being financed, subject to the following:

(1) The applicant is obligated under a written lease or other formal agreement to pay such rent or charges in advance of the time income will be available from the operations to make such payment. For grazing fees an invoice showing the number of livestock to be grazed, the grazing period, the cost per head and the total cost may be used in lieu of a written lease. However, when relatively small amounts are involved an invoice will not be required if the applicant's explanation of a satisfactory grazing agreement is recorded in the loan docket.

(2) Arrangements cannot be made for the rent or charges to fall due when income will be available from the operations to make such payments.

(3) Not more than 1 year's cash rent or cash charges will be paid with loan funds in any 1 lease year, except that if a loan is approved near the end of the current lease year funds for payment of such rent or charges for the succeeding lease year may be included in the loan.

(4) The terms of the rental agreement provide the applicant with reasonably satisfactory tenure.

(f) Payment of: (1) Personal and real property taxes due or about to become due subject to the limitations in § 1831.10 (b)(5), and water or drainage charges or assessments. In addition, any amounts advanced in excess of the equivalent of

1 year's taxes or water or drainage charges or assessments, without regard to whether such items are a lien on the property, will be treated as refinancing debts in accordance with paragraph (m) of this section.

(2) Social Security taxes in connection with hired labor.

(3) Premiums for insurance on real estate and personal property, including premiums on homeowners policies. However, operating loans may be made to pay premiums on insurance covering real estate of a borrower indebted for both FHA real estate and operating loans, or of an FHA real estate loan borrower who is obtaining an operating loan for other purposes only if the operating loan is adequately secured.

(4) Premiums for public liability and property damage insurance on farm and other equipment, including farm trucks, and on recreational and other nonfarm enterprises.

(g) Payment of: (1) Not more than a year's interest calculated at a rate not to exceed that which is reasonable and customary for the area, that is due on, or about to become due on debts secured by liens of other creditors on property essential for the farm, recreational or other nonfarm enterprises.

(2) FHA interest-only installment(s) scheduled for the first January 1, and when a deferred payment of principal is involved, the second January 1 following the closing of the loan, when a borrower will not otherwise be able to meet the initial interest payment(s) on his loan because income from crops, livestock, or other sources is not available.

However, the Finance Office may credit loan funds advanced for the payment of interest-only installment(s) first to interest from the date of payment (loan closing) and then to principal, if applicable.

(h) Payment of depreciation in any 1 year not to exceed 15 percent of the market value of the essential farm, recreational or nonfarm enterprise equipment under prior lien to another creditor, or 15 percent of the amount owed to such creditors, whichever is lesser.

(i) Acquisition of memberships in farm purchasing and marketing and farm service-type cooperative associations, or to purchase stock in such associations to help provide capital for improvement of services to farmer members. Purchase membership or stock in recreational or other nonfarm purchasing, marketing, service or promotional-type cooperative association organized to produce additional income for its members exclusive of membership in associations which will acquire, lease, or improve land not otherwise under the control of the members.

(j) Meeting family subsistence needs, including premiums on reasonable amounts of health and life insurance, and expenses for medical care or paying bills incurred for any items in this paragraph for the crop or operating year being financed. Applicants must understand, however, that within the limits of their resources they should plan and carry on adequate food production and conservation programs.

(k) Purchase of essential home equipment and furnishings, and the payment for home equipment repairs required by the applicant family to sustain itself in a reasonably satisfactory manner.

(l) Expenses incident to loan closing.

(m) Refinancing secured and unsecured debts, other than the payment of bills referred to in paragraphs (d), (e), and (j) of this section, subject to the following:

(1) The amount advanced for such purposes does not exceed the applicant's equity in the animals, birds, bees, fish, and so forth; farm and recreation equipment; and nonfarm enterprise equipment and inventory which are to be taken as security for the loan.

(i) When it is necessary to refinance a debt that was incurred for the production of feed on hand, or that is secured by a lien on such feed, the applicant's equity in the feed also may be used, if necessary, to justify the refinancing of this particular debt. The funds advanced for this purpose will be scheduled for repayment in the same manner as funds advanced for the purchase of feed.

(2) FHA may refinance a debt incurred under the terms of a formal subordination agreement pursuant to § 1871.11 of this chapter, even though the amount advanced may exceed the borrower's equity in the chattels referred to in paragraph (m)(1) of this section, provided:

(i) It is determined that the borrower will not receive sufficient income to repay the subordination agreement.

(ii) The borrower's inability to pay the full amount is due to circumstances beyond his ability to control, such as depressed prices or unusually adverse conditions which materially reduced income; accident or serious illness; or substantial loss of livestock or crops due to disease, pestilence or catastrophe.

(iii) The County Supervisor personally contacts the creditor and documents in the County Office case folder the necessity for refinancing.

(iv) The borrower is making satisfactory progress under prevailing conditions in becoming successfully established in farming.

(v) Assistance will continue to be provided the borrower by FHA.

(3) The provisions of § 1831.10 (a) and (b).

(4) The provisions of § 1831.32(e).

(n) Purchase of milk base either with or without cows where such action is necessary to assure the borrower a satisfactory market for his dairy products, as provided in a manner prescribed by or on prior approval of the State Director.

(o) Purchase of grazing license or permit rights of private parties which can be validly sold and transferred or waived separate from any land lease or other interest in land either with or without eligible livestock, provided loans for this purpose are approved by the State Director or are authorized by requirements issued by the State Office.

(p) The following real estate improvements are subject to the limitations in § 1831.10:

(1) Purchase, construction, alteration, repair, or relocation of service buildings or facilities essential to the operation, including minor repairs or alterations to dwellings.

(2) Purchase, repair, or relocate essential equipment which is or will become a part of the real estate and cannot be made subject to a security interest as a fixture in Uniform Commercial Code (UCC) States, or be severed and made subject to a valid chattel mortgage in Louisiana, or to security interest in any UCC State.

(3) Provide land and water development, use, and conservation essential to the operation of the farm and any recreational or other nonfarm enterprise facilities such as fencing, land clearing, establishment and improvement of permanent hay or pasture drainage and irrigation facilities, basic application of lime and fertilizer, fish ponds, dams, nature trails, repair shops, sales buildings, golf driving ranges, lakes, hiking trails and campsites, and the development or acquisition of water supplies or rights. Also, loan funds may be used to pay that part of the cost of facilities, improvements, and practices which is to be earned by participation in the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced likely will exceed $500, the applicant will assign the payment to the FHA.

(q) The purchase of a franchise, contract, or a privilege when such action is necessary to the operation of the planned enterprise.

(r) Any purpose authorized in this subpart to an eligible applicant to enable a dependent in his immediate family to initiate, develop, or carry on a farm or nonfarm enterprise in connection with his or her participation in youth organizations such as Future Farmers of America, Future Homemakers of America, 4-H Clubs, or approved vocational training courses.

(s) Make partial payment on grain or other storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing the remaining portion of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program. Handling FHA's security interest in such facilities will be in accordance with § 1872.28 of this chapter.

§ 1831.10 Special requirements and loan limitations.

(a) *Refinancing of debts.* (1) When an applicant's request includes the use of loan funds for the refinancing of debts, it must be determined before a loan is made that his present creditors will not give him rates and terms on the existing debts that he reasonably

could be expected to meet. Before refinancing any debt, the County Supervisor will:

(i) Discuss with the applicant the possibility of obtaining the needed credit from the applicant's present creditors or other sources. He will request the applicant to contact his present creditors to explain his credit needs and to determine if the creditor will renew, extend, change or reduce the present debts, as appropriate. He also will advise the applicant of other credit sources available in the area which might assist him with his credit needs and request that he contact such credit sources. If the applicant is unsuccessful in his efforts to obtain credit or to get a revision of the rates and terms of his indebtedness, the County Supervisor will obtain from the applicant the reasons given by the present creditors and other sources for not assisting the applicant, and document such information in the running record.

(ii) If the County Supervisor is notified by the applicant that his negotiations with the present creditor(s) or other sources were unsuccessful he will determine on the basis of the applicant's financial statement, planned income and expenses, estimated amount available for debt payment, and the additional facts presented by the applicant, whether it appears necessary to refinance the debt(s) or to obtain a change in the rates and terms. When it is determined that refinancing may be necessary, he will contact in person when practicable, each secured creditor and each unsecured creditor to whom substantial debts are owed for the purpose of verifying the necessity for refinancing. If the loan is to be processed, a statement of each secured account to be refinanced showing the final due date, interest rate, annual installment, amount delinquent, unpaid principal, and accrued interest will be obtained.

(b) *Purposes for which loans may not be made.* While it is impracticable to list all of the purposes for which loans may be made, the following are those commonly requested by applicants which are not authorized:

(1) Purchase of passenger automobiles or the refinancing of debts for such purchases. However, this will not prohibit the refinancing of such a debt secured by a lien on items described in § 1831.9 (a) and (b) only, or on such property and on the automobile to the extent of the equity in the property other than the automobile which serves as security for the debt.

(2) Payment of Federal or State income taxes, or social security taxes payable by borrowers in their own behalf.

(3) Purchase of real estate, or the making of payments on, or the refinancing of any indebtedness secured by a lien on real estate other than the payment of taxes and interest as authorized in this subpart. However, this will not prohibit the refinancing of a debt secured by a lien on items described in § 1831.9 (a) and (b), as well as on real estate to the extent of the equity in the nonreal property serving as security for the debt. In addition, loans may not be made for carrying on any land purchasing or land leasing program.

(4) Replacing items described in § 1831.9 (a) and (b) or crops sold, or refinancing chattel debts incurred primarily for the purpose of obtaining funds for any of the real estate purposes referred to in subparagraph (3) of this paragraph, if such action was taken by the applicant with the intent of replacing the chattel property or refinancing the debts with operating loan funds.

(5) Payment of taxes in connection with real estate securing FHA loans other than operating loans.

(6) Payment of debts owed by the applicant to the FHA or to make principal or interest payments on such debts, except as provided in § 1831.9(g) (2) of this subpart.

(7) To purchase membership or stock in production cooperatives, purchase memberships or stock for the purpose of establishing control by the FHA in any type of cooperative, or furnish a majority of the associations' capital requirements.

(c) *Limitations on loans for real estate improvements.* (1) Not more than $2,500 may be loaned to a borrower in any one fiscal year for real estate improvements or for refinancing unsecured debts clearly incurred for such purposes. Before an operating loan is made for real estate improvements, a careful analysis must be made of the applicant's resources and proposed operations and all of the following determinations must be made:

(i) Operating loans will not be needed or made year after year to make substantial real estate improvements

(ii) Such real estate improvements cannot be provided practicably through a real estate loan.

(iii) The sum of the operating loan being made for real estate improvements and the unpaid indebtedness against the farm and other security which secures the FHA real estate loan will not exceed the total indebtedness or the normal value limitations prescribed for real estate loans. The borrower's equity in the livestock and farm and other equipment to be taken as security for the operating loan may be added to the normal value of the farm where this is necessary to comply with the normal value limitations prescribed in Subpart A of Part 1821 of this chapter.

(iv) The applicant will likely continue to operate the farm for a sufficient period of time and under such terms that will enable him to obtain reasonable returns on his investment.

(2) Operating loans may be made to tenants to finance modest real estate improvements or repairs, provided the County Supervisor determines that the applicant has reasonably secure tenure for a sufficient period to enable him to realize adequate benefits to justify the expenditure, or a written lease is obtained providing for compensating the tenant for any unexhausted value of the improvement upon termination of the lease.

(d) *Limitations on amount of loan.* The amount of each loan will be limited to the needs of the applicant and his ability to pay. In addition, consideration will be given to the value of the chattel property, including crops, which will be available as security. In no case may a loan be made which would result in the total principal balance outstanding to exceed $35,000 for operating loans (including production and subsistence).

(e) *Debt settlement cases.* A loan will not be made to an applicant whose debts have been settled pursuant to Part 1864 of this chapter, or who has been released from personal liability under Subpart A of Part 1872 of this chapter, as reflected by the County Office records, or where settlement or release under such requirements is contemplated, unless the applicant's failure to pay his loan indebtedness was the result of circumstances beyond his control, the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed, and the borrower's operations will afford him a reasonable prospect of repaying the loan and meeting his other obligations. Prior to approval of the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made.

(f) *Loans to individuals jointly engaged in farming, recreational, and other nonfarm enterprises.* (1) A joint loan may be made to two eligible applicants living together or living separately and operating jointly not larger than the equivalent of one adequate family farming operation. When joint loans are made, both individuals will execute the application, payment authorization, notes, security agreements, and other documents required in connection with the making and closing of the loan.

(2) Separate loans may be made to eligible applicants who are jointly engaged in a farming or other operation, provided (a) not more than three individuals are interested in the operation, and (b) the operation provides the equivalent of not larger than one adequate family farming operation for each individual.

(g) *Relationship with emergency loans.* Operating loans will not be made to applicants whose credit needs can be met adequately with emergency loans as prescribed in Subpart A of Part 1332 of this chapter.

§ 1831.11 Rates and terms.

Interest will be charged at the rate of 6⅞ percent per annum on all operating loans. Interest on the initial advance will accrue from the date of the promissory note. Interest on future advances will accrue from the date of the loan check for each such advance.

(a) Payments of principal and interest on operating loans will be scheduled on the note in accordance with the borrower's reasonable ability to pay, determined by an analysis of his operations as

reflected in his Form FHA 431–2 or Form FHA 431–4. All installment dates will be January 1 of each year, except the final installment which will be determined in accordance with § 1831.32(h). No installment will be made payable later than 7 years from the date of the note. When it is determined that income sufficient to meet any payment of principal will not be received by the borrower until the second or third January 1 following the date of the promissory note, the repayment of principal may be deferred to the second or third January 1, as appropriate, following the date of the note. When the payment of principal is deferred to the second January 1 following the date of the note, the first scheduled installment will be the amount of accrued interest from the date of the note to February 1 of the next calendar year. When the payment of principal is deferred to the third January 1 following the date of the note, the second scheduled installment will be the amount of accrued interest for a full year and the first scheduled installment will be the amount of accrued interest from the date of the note to February 1 of the next calendar year.

(1) Advances for annual recurring operating expenses or for paying bills incurred for such purposes for the operating or crop year being financed will be scheduled for payment when the principal income from the year's operations normally would be received. This includes advances for the payment of interest, taxes, and depreciation.

(2) Advances to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, except for feed of a type which the County Supervisor determines will be produced in future years, will be scheduled for payment when the principal income from the sale of such livestock or livestock products can be expected.

(3) Advances for purposes other than those enumerated in subparagraphs (1) and (2) of this paragraph, will be scheduled for payment over the minimum period consistent with the applicant's ability to pay, as determined from an analysis of the operations. This will include, among other things, the purchase of significant amounts of feed or seed which will be produced in future years and major repairs to equipment. In no instance may the payment schedule extend beyond the useful life of the security offered for the advance.

(4) When conditions warrant such action, principal payments scheduled in accordance with subparagraph (3) of this paragraph may vary in amount. For example, when a livestock enterprise is being expanded as the feed and pasture program is developed, a graduated payment schedule could be used if necessary. In connection with subsequent loans for such purposes, it is necessary to consider payment schedules established previously for outstanding loans in order to assure a realistic overall payment schedule within the prescribed limits. However, the last installment will not be larger than the amount which can then be refinanced with another lender or be repaid within a renewal period of not to exceed 5 years.

§ 1831.12 Security policies.

The words "security instrument(s)" as used in this subpart includes financing statements and security agreements, chattel mortgages, and similar lien instruments.

(a) Except as provided in subparagraphs (3) and (4) of this paragraph and paragraphs (b), (c), (d), and (e) of this section, each loan will be secured as follows:

(1) *Crops, title to which is held by the borrower.* By a first lien on the applicant's crops, or his share of the crops, if he is a share tenant, which are growing or to be grown by him, subject only to:

(i) The landlord's lien on the crops for reasonable cash or privilege rent for the current year.

(ii) The real estate mortgagee's lien or real estate purchase contract holder's lien on the crops for the current year's installment on the real estate debt, provided such installment is reasonable when related to the normal rental charges for similar farms in the area.

(iii) The lien or contract of another creditor on crop(s) for necessary advances for planned annual farm operating and family living expenses for the crop year, provided the other creditor agrees in writing to the FHA that his advance(s) will be limited to a specific amount which has been determined necessary by the borrower, FHA, and the other lender.

(2) *Crops grown under contract when title to the crop is held by the contractor.* When a crop is being produced, harvested, processed, or marketed by the applicant under an equitable written contract with a responsible contractor and title to the crop is retained by such contractor, loans may be made in connection with such crops, provided the contractor limits his advances to production, harvesting, processing, or marketing costs in connection with the contract crop or to purposes related thereto, and an assignment of all or a part of an applicant's share of the income from the crop is given to the FHA and is accepted in writing by the contractor holding title to the crops. The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FHA indebtedness from such crop. However, when no payment is expected to be made on the loan from the crops, an assignment will not be required. The form for use in obtaining such assignments will be approved by the OGC. In UCC States the assignment will constitute a security agreement on such crop income, and the contract will be described specifically, or as "Contract Rights" or "Contract Rights in Crops," and so forth, in paragraph 1(b) of the financing statement.

(3) *Feed crops only.* Subject to the limitations of subparagraph (6) of this paragraph, a lien on crops need not be taken when the crops to be produced by the borrower are for feed purposes only and the loan approval official determines that the loan is otherwise reasonably well secured and that liquidation action, either voluntary or involuntary, is not likely to occur during the crop year for which the loan is made.

(4) *Items of personal property described in § 1831.9 (a) and (b), purchased or refinanced.* By a lien on all such items subject only to the lien of another creditor for amount(s) advanced or to be advanced by such creditor to meet planned annual operating and family living expenses for the operation or crop year, provided the other creditor agrees in writing to the FHA that his advance(s) will be limited to a specific amount which has been determined necessary by the borrower, FHA, and the other lender. However, liens will not be taken on such equipment, facilities, or buildings which cannot be made subject to a valid chattel lien or a valid security interest, or on livestock or poultry kept primarily for subsistence purposes, or on household goods and equipment or on small tools and equipment.

(5) *Undivided interests.* An applicant obtaining a loan for the purchase of an undivided interest in the property referred to above or the refinancing of debts on an undivided interest in such items will secure his loan by a lien on his undivided interest in the item purchased or refinanced along with any other security required by this action. Joint security instruments will not be taken except as provided in § 1831.10(f). Each party having an undivided interest in such property will execute Form FHA 441–12, "Agreement for Disposition of Jointly-Owned Property," providing for the disposition of his interest in the property. However, Form FHA 441–12 will not be required when a tenant and landlord own property jointly and the lease provides for satisfactory division of such property or the proceeds from its sale, or a joint security instrument is taken to secure loans to two individuals jointly engaged in the operation.

(5) *Other items of personal property owned by the applicant described in § 1831.9 (a) and (b), not purchased or refinanced.* By the best lien obtainable on as much of such property of significant security value as is necessary to protect the interest of FHA. This will include any undivided interest in such property owned by the applicant jointly with others who have an interest in the operation. A lien will not be taken under this subparagraph on the types of items excluded under subparagraph (4) of this paragraph.

(6) *Liens and assignments to protect FHA's interest in feed purchased or produced with loan funds.* Loans made to purchase or produce feed for livestock being fed for market or to be fed to productive livestock (excluding livestock and poultry kept primarily for subsistence purposes) will ordinarily be secured by first liens on such livestock. However, when a first lien cannot be obtained, the loan will be secured by liens or assignments as provided below:

(i) When the livestock will be owned by the applicant and a first lien cannot

be obtained, a junior lien will be taken, provided it is determined that the applicant has, or will acquire during the feeding period, an equity in the livestock being fed or will receive income from livestock or livestock products, either of which must be commensurate with the investment made for this purpose, and prior lienholders sign Form FHA 441–13, "Division of Income and Nondisturbance Agreement," or similar form approved by the OGC, agreeing to a suitable nondisturbance period and to a division of the income to be received from the livestock and livestock products, which will permit the applicant to pay his loan in accordance with the policies expressed herein. However, when no payment is expected to be made on the loan from the livestock or livestock products, Form FHA 441–13 will not be required.

(ii) When the livestock enterprise is to be managed by the applicant under a livestock share lease, share agreement, or contract, and the income to be received therefrom will be from the livestock fed, or from livestock products, an assignment of all or a part of such income will be taken, provided the owner or purchaser of the livestock or livestock products accepts in writing the assignment. The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FHA indebtedness from such income. The form for use in obtaining such assignments will be approved by the OGC. However, when no payment is expected to be made on the loan from the livestock or livestock products, an assignment will not be required. In UCC States, if an assignment on the livestock income is taken, such assignment will constitute a security agreement on such income and the share lease, share agreement, or contract will be described specifically, or as "Contract Rights" or as "Contract Rights in Livestock," and so forth, in paragraph 1(b) of the financing statement.

(7) *Assignments of crop insurance.* Assignments of all or a part of crop insurance proceeds will be taken when the loan approval official determines such action is necessary to protect the interests of the FHA.

(i) In order to obtain a claim on Federal crop insurance proceeds, it will be necessary to obtain an assignment on such proceeds. The assignment will be prepared on Form FCI–20, "Collateral Assignment," furnished by the local representative of the Federal Crop Insurance program. The assignment must be approved by the Federal Crop Insurance Corporation.

(ii) An assignment of other crop insurance is not required in cases where a crop insurance policy contains a standard mortgage clause naming the FHA as mortgagee or secured party.

(8) *Assignment of or consent to payment of proceeds from sale of products or other income.* (i) Assignments of and "consents" to payment of proceeds from the sale of products or other income will be used when payments are planned from such sources and such instruments are necessary to protect the interest of FHA and it is possible to obtain the acceptance of the purchaser or other payer.

(*a*) Form FHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income except dairy products in which FHA has a security interest under the UCC.

(*b*) Form FHA 441–8, "Assignment of Proceeds from the Sale of Agricultural Products," will be used for products or income in which FHA does not have a security interest under the UCC. Other forms approved by the OGC may be used when Form FHA 441–8 is not adequate.

(*c*) Assignment of incentive and agricultural program payments will be taken on forms provided by ASCS except that Form FHA 462–8, "Wheat and Feed Grain Programs—Assignments," will be used to obtain assignments of Wheat Certificate and Feed Grain Program payments.

(*d*) Form FHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FHA has a security interest under the UCC.

(9) *Real estate.* Real estate security will not be taken in connection with making initial operating loans, except that in most UCC States a security interest may be taken on fixtures even though they are considered to be real estate in the particular State. Furthermore, such real estate security will not be taken in connection with making subsequent operating loans except in individual cases in which it appears that it may be necessary to rely on such security for payment of the loan. When such security is taken the provisions of § 1872.19 of this chapter will apply. Generally, an item is to be considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or damaging substantially the item itself.

(10) *Consent and subordination agreements and severance agreements.* (i) In those UCC States in which the State procedure does not require the use of a severance agreement, Form FHA 440–26, "Consent and Subordination Agreement," will be used as necessary to meet the security requirements contained in subparagraph (4) of this paragraph.

(ii) In Louisiana, and in those UCC States in which State procedures so provide, Form FHA 440–6, "Severance Agreement," will be obtained when operating loan funds are used to purchase or refinance debts on property which is or may become a fixture, and it is necessary to sever such property from real estate to meet the security requirements contained in subparagraph (4) of this paragraph.

(b) Loans for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided it would have security value. Such security interest also may be taken on significant amounts of dividends to be received from stock, memberships, or patronage, or on undivided profits and other retains. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC. County Offices will retain water stock certificates and similar collateral. A notation will be made on Form FHA 405–1, "Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the interest of FHA due to such reasons as the amount of the advance or the borrower's financial situation.

(c) Loans of not more than $1,500 for real estate improvements may be made on the basis of the borrower's promissory note without taking security when the applicant has a good reputation for paying his debts promptly, he clearly has sufficient income to meet all of his obligations, and he has assets from which a recovery of the loan could be made in case of default.

(d) Property and public liability and property damage insurance will be obtained as follows:

(1) Applicants obtaining operating loans should be encouraged to carry insurance on the property serving as security for the loan and on other chattel or real property necessary to afford them adequate protection against substantial losses from the common hazards existing in an area. It is especially desirable that insurance be obtained by applicants who obtain large loans and have considerable personal property including feed, supplies, and inventory centrally stored or housed over an extended period. Such insurance may be required by the loan approval official in individual cases or by requirements set forth by the State Director.

(2) Applicants receiving loans for a recreational or other nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on customer's property in custody of the borrower. Such insurance may be required by the loan approval official in individual cases.

(3) When insurance is required on property serving as security for an operating loan, a Form FHA 426–2, "Property Insurance Mortgage Clause (Without Contribution)," or a standard mortgage clause which is in general use in the area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration) as mortgagee or secured party.

(e) State Directors, with the advice of the OGC, will inform County Supervisors

on a State basis if it is necessary, because of State statutes or types of leases, land purchase contracts, and real estate mortgages commonly in use, to obtain subordination agreements, Form FHA 441–17, "Certification of Obligation to Landlord," severance agreements, disclaimers, and consent and subordination agreements, and will otherwise supplement this paragraph as necessary.

(f) Lien searches will be obtained in accordance with the provisions of Subpart B of this part to determine that the FHA will have the required security.

§ 1831.13 Tenure.

Good tenure is essential for a successful operation. Applicants will, therefore, be required to make satisfactory arrangements for the use of the kind of property necessary for carrying on the planned operation. The tenure policies set forth below will be followed by FHA officials in the making and approving of loans.

(a) *Tenant operators.* (1) Before a loan is made, the tenant, landlord, and County Supervisor must understand the terms and conditions of the tenure arrangements. These understandings can best be reached through discussions, preferably on the unit, and such discussions will be held whenever possible, except when no significant adjustments and improvements are to be made in the operations. In any event the understanding will include, as applicable, how the unit will be operated, the manner in which the planned adjustments, improvements and operation will be financed, the distribution of income and expenses and other contributions by the tenant or the landlord, provisions for the division of the jointly-owned property when the lease is terminated, agreement on any pertinent longtime aspects of the case, and any other factors affecting the tenure relationship.

(2) Ordinarily, loans will not be made unless the applicant obtains a satisfactory written lease. However, when for good reason an applicant cannot obtain a written lease on part or all of the real estate he expects to operate, the loan may be approved, provided the County Supervisor determines that the understanding existing between the tenant and landlord are definite and the rental terms are satisfactory, the lack of a written lease will not likely jeopardize the applicant's operations, and the loan docket clearly reflects the rental arrangements made with respect to each tract of land or building.

(3) Pertinent information concerning the tenure arrangements will be recorded as set forth in Subpart B of this part.

(b) *Owner operators.* Before loans are made to owner operators, the terms existing with respect to any real estate indebtedness owing will be ascertained and a determination will be made as to whether the applicant's proposed operations will enable him to meet the required payments on the real estate indebtedness as well as being feasible in other respects, and the applicant will have reasonably secure tenure on the real estate under the terms of the real estate mortgage or purchase contract.

§ 1831.14 Loan approval.

(a) *Indebtedness limitation with respect to loan approval authority.* Current information regarding limitations on loan approval authorities of various officials of the FHA may be obtained from any county or State Office of the FHA or from its National Office at 14th and Independence Avenue SW., Washington, DC 20250.

(b) *Administrative determinations and responsibilities.* When the County Committee certification has been made, the loan approval official will determine administratively whether:

(1) The applicant is eligible and likely to be successful in the proposed operations and to achieve the objectives of the loan.

(2) The applicant has available, under satisfactory tenure arrangements, a unit adequate in size and productivity to reasonably expect success, taking into consideration farm and other income including income from a recreational or other nonfarm enterprise.

(3) Plans have been made and documented for:

(i) A suitable system of farming or type of recreation or other nonfarm enterprise.

(ii) The crucial adjustments and improvements and key practices essential for the applicant's success.

(iii) Effective supervision and corrective action.

(4) The proposed farm and home operations, and recreational or other nonfarm enterprise(s) of the applicant are feasible.

(5) The loan is feasible and can be repaid from income as scheduled, except as provided in § 1831.11(a)(4), with respect to the last installment.

(6) The amount of the loan and the purposes for which the funds are to be used are consistent with the applicant's needs and are for authorized purposes.

(7) The security requirements can be met.

(8) The certifications required of the applicant and County Committee have been made and are a part of the loan docket.

(9) The loan meets all other FHA requirements.

§ 1831.15 Nondiscrimination poster.

Borrowers who have received operating loans for recreational enterprises since January 3, 1965, must display the nondiscrimination poster, "And Justice for All," at the recreation area once it is open to the public.

Dated: November 23, 1971.

Subpart B—Operating Loan Processing

Sec.
1831.31 General.
1831.32 Loan forms and routines.
1831.33 Loan docket.
1831.34 Review and approval or rejection.
1831.35 Loan checks.
1831.36 Loan closing.
1831.37 Revision in the use of Operating loan funds.

AUTHORITY: The provisions of this Subpart B issued under section 339, 75 Stat. 318, 7 U.S.C. 1989; Order of Acting Secretary of Agriculture, 36 F.R. 21529; Order of Assistant Secretary of Agriculture for Rural Development and Conservation, 36 F.R. 21529.

Subpart B—Operating Loan Processing

§ 1831.31 General.

This subpart is supplemented by Part 1890r of this chapter and modified by Subpart B of Part 1810 of this chapter. This subpart sets forth the requirements and procedures for the preparation and execution of documents and for other routines in connection with making operating loans as prescribed in Subpart A of this part.

§ 1831.32 Loan forms and routines.

(a) *Applications for Farmers Home Administration (FHA) assistance.* Applications for FHA assistance will be taken as outlined in Part 1801 of this chapter.

(b) *Form FHA 440–2, "County Committee Certification or Recommendation."* (1) When the applicant is determined to be eligible, the County Committee will execute Form FHA 440–2 before the loan is approved. This certification will cover any operating loan(s) to be made to the applicant for the crop or operating year specified within the maximum amount of credit established by the County Committee. The date designated by the County Committee as the end of the crop or operating year and the maximum amount of credit will be inserted in the appropriate spaces.

(i) It is intended that County Committees will have some latitude in determining for which crop or operating year(s) credit may be extended. In some cases where an initial operating loan is being made, the County Committee may indicate that the crop or operating year for which credit may be extended coincides with that for which an interim plan is developed. Such action may be taken because the Committee wishes to review the circumstances of the applicant again at the end of the interim crop or operating year before committing itself for the succeeding crop or operating year. In other cases, the County Committee may, when an application is being acted upon during the latter part of a crop or operating year, establish the maximum amount of credit for both the interim crop or operating year and the next crop or operating year, provided the operations for the current year have advanced to the point that the County Committee will be able to determine with reasonable certainty the maximum amount of credit which the applicant would need for the next crop or operating year under normal conditions. The same principles with respect to County Committee certifications for an initial loan may be followed in connection with subsequent loans.

(ii) If it is found, after an applicant has been certified as eligible, that there will be a major change in operations or that an amount of credit in excess of the maximum previously established by

the County Committee will be required for the designated crop or operating year, it will be necessary for the County Committee again to certify the applicant as eligible on the basis of the changed circumstances if a loan is to be made.

(2) When the County Committee has agreed to increase the original amount of loan assistance certified for the crop or operating year because such amount was insufficient to meet the needs of the borrower, a new Form FHA 440–2 will be prepared and executed. The date of the end of the same crop or operating year (month, day, and year) as that indicated in the original certification will be inserted in the appropriate space. In the space indicating the maximum amount of credit for the crop or operating year, the amount to be inserted will be the sum of the latest certification for the crop year for any operating and emergency loans, plus the additional amount(s) of any such loan(s) the County Committee determines is necessary to meet the actual credit needs of the borrower for the remainder of the crop or operating year. A notation will be made in the blank space on Form FHA 440–2 that the County Committee has again reviewed the applicant's situation and his credit needs for the crop or operating year are as indicated rather than $_____ shown on Form FHA 440–2 dated _____. The new Form FHA 440–2 should be executed by the County Committee and dated as of that date. The Form FHA 440–2 previously executed will be retained in the case files.

(c) *Form FHA "Long-Time Farm and Home Plan."* Form FHA 431–1 will be developed with the assistance of the County Supervisor.

(d) *Form FHA 431–2, "Farm and Home Plan."* Form FHA 431–2 will be developed by the borrower with the assistance of the County Supervisor using Form FHA 431–1 as a framework, except when a loan is made only for the acquisition of membership or the purchase of stock in a cooperative association and the applicant is not indebted for another FHA loan. In the latter case, the best estimates available will be used to complete Table J of Form FHA 431–2 in order to determine whether the loan requested can be paid and the period over which payments should be scheduled. The source of payment should be shown in Table K. When the preparation of Table J is inadequate to enable the loan approval official to make the required determinations, other portions of Form FHA 431–2, as necessary, will be used.

(e) *Appraisal of chattel property.* (1) When a debt is to be refinanced under the provisions of § 1831.9(m), Form FHA 440–21, "Appraisal of Chattel Property," will be completed. In lieu thereof, a form issued by the State Director showing as a minimum the information required on Form FHA 440–21 may be used. Ordinarily only one appraisal form will be required with a loan docket.

(2) When funds are to be advanced for the payment of depreciation pursuant to § 1831.9(h), an appraisal will be made with respect to the farm, recreation, or nonfarm equipment involved for the purpose of making the determination required in that paragraph.

(f) *Form FHA 440–32, "Request for Statement of Debts and Collaterals."* This form will be used as necessary to obtain information from the creditors of the applicant concerning the amount of debts owed and the collateral for the debts.

(g) *Tenure agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. Where it is not practical to obtain a copy of the lease agreement, a statement setting forth those terms and conditions of the agreement which are not clearly reflected in the Farm and Home Plan will be prepared and made a part of the loan docket. A brief summary of the joint discussion between the tenant, landlord, and County Supervisor will be reflected in the running case record. If such a discussion is not held, a statement of the reasons therefor should be included in the running case record.

(h) *Form FHA 441–1, "Promissory Note."* One note will be prepared showing the full amount of the loan regardless of the number of advances involved except as provided in subparagraph (1) of this paragraph. The amount of the note will be rounded to the nearest $100. In addition to the principal, each scheduled installment will include interest. The first installment may not be less than the amount equal to interest on the loan from the estimated date of closing to February 1 of the next calendar year. Instructions available in all FHA offices for preparation of Form FHA 441–1 will be used for the computation of interest. All installment due dates will be January 1 of each year except the final installment. The final installment will be payable on the date of the note plus the number of years over which the loan is amortized. No installment will be made payable later than 7 years from the date of the note. The note will be dated on the date the loan is closed. The applicant's spouse will be required to execute Form FHA 441–1 when legally required by State law, the loan approval official determines that the signature is needed because of the spouse's interest in the farm being operated or in property offered as security, or it is determined by the State Director on a State basis that the spouse's signature will be required. The State Director, with the advice of the Office of the General Counsel (OGC), will issue an appropriate State requirement concerning the spouse's signature on Form FHA 441–1. In all cases in which the wife joins with her husband in executing a promissory note or other evidence of indebtedness, the purpose and effect of the wife's signature will be, in addition to any other purpose and effect for which her signature is obtained, to engage her separate and individual personal liability regardless of any State law to the contrary. The original and copy of the promissory note, Form FHA 441–1, will be sent to the Finance Office immediately after loan closing.

(1) When an operating loan is made for purposes which would be secured in accordance with the provisions of § 1831.-12(a) and simultaneously for purposes in which the security provisions of § 1631.12 (b) and (c) apply, separate notes will be required.

(i) *Form FHA 440–9, "Supplementary Payment Agreement."* Form FHA 440–9 ordinarily should be used for each borrower who regularly (such as weekly, monthly, or quarterly) receives substantial income from a recreation or other nonfarm enterprise. It may be used when farm income from which payment is to be made will be received substantially before the January 1 installment due date. The State director may issue State requirements setting forth additional conditions under which this form would be used.

(j) *Form FHA 440–1, "Payment Authorization."* (1) Only one payment authorization will be prepared for the total amount of the loan regardless of the number of advances involved. This is also true when separate notes are prepared in accordance with paragraph (h)(1) of this section. The approval official will indicate his determination that the applicant is eligible and his approval of the loan by signing and dating the original in the space provided, and by inserting his title. The type of loan will be inserted in the space provided for the purpose as follows:

(i) "OL–I" to indicate a loan to an applicant who is not indebted for an Operating loan.

(ii) "OL–S" to indicate a loan to a borrower who is indebted for an Operating loan.

(2) To assist the Finance Office in the examination of loan documents, enter on Form FHA 440–1, the date, amount, and receipt number of receipts issued for collections for which Form FHA 451–26, "Transaction Record," has not been received in the County Office when a loan is submitted which would cause the borrower's indebtedness before application of such collections to exceed the debt limitation for Operating loans or the delegated loan approval authority.

(k) *Borrower's case number.* The use of the borrower's case number (including the State and County codes) for loan processing is prescribed in the guide available in all FHA offices for preparation of Form FHA 440–1.

(l) *Immediate and future disbursements.* The applicant's total anticipated credit need for the crop or operating year will be planned when Form FHA 431–2 or Form FHA 431–4, "Business Analysis—Nonagricultural Enterprise," as applicable, are developed. Loan funds for the full amount of FHA credit required will be disbursed in an immediate advance, an immediate advance and one or more future advances, or one or more future advances without an immediate

advance. All such advances must be disbursed at least 30 days apart. The payment date(s) for any future advance(s) must not be later than the date shown as the ending date of the crop or operating year, Item 2 of Form FHA 440–2. When additional FHA credit is required that could not be foreseen at the time plans for the year were completed, Form FHA 431–2 or Form FHA 431–4 will be revised to include the additional amount and a subsequent loan docket will be submitted to the Finance Office.

(1) Each advance will be limited to an amount which can be expended promptly, usually within 60 days after receipt of the check in the County Office. This will prevent loan funds from remaining in the possession of borrowers or in supervised bank accounts for long periods of time.

(2) The loan authorization will show the schedule of advances. Upon receipt of a payment authorization the Finance Office will obligate funds for the total amount of the advance(s) shown. For each future advance the date for Thursday of the week in which the loan check is to be issued will be shown on Form FHA 440–1. The Finance Office will issue checks for future advances without further action by the County Office. In order that these dates will be available in County Offices, an appropriate notation should be inserted on Form FHA 405–1, "Management System Card—Individual," if it has been prepared, or on the County Office copy of the Promissory Note.

(3) When a future advance is to be canceled the following actions must be taken:

(i) Complete Form FHA 440–10. "Cancellation of Loan or Grant Check and/or Obligation."

(ii) Prepare and execute a substitute note on Form FHA 441–1 reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute Promissory Note the County Supervisor will show on Form FHA 440–10 the revised amount of the loan and the revised repayment schedule.

(iii) Prepare a Form FHA 441–7, "OL–EM and Other Credit Analysis," to show borrower's name and case number and enter under Item I the amount for each purpose being reduced or canceled and the total of such amounts. In the space above Item I enter in large red letters the word "Reduction."

(iv) Transmit to the Finance Office the Forms FHA 440–10, FHA 441–1 and FHA 441–7 prepared as outlined above.

(m) *Form FHA 441–5, "Subordination Agreement," or Form FHA 441–17, "Certification of Obligation to Landlord."* When a subordination agreement is required on crops, livestock, farm equipment, and other chattel property, including items which have become personal property through execution of a severance agreement, Form FHA 441–5 or other form approved by the State Director, with the advice of the OGC, where Form FHA 441–5 is not legally sufficient, will be used except as provided in subparagraph (1) of this paragraph. The years to be covered by the subordination generally will be for the period of the loan or the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(1) Form FHA 441–17 may be used in lieu of obtaining a subordination agreement when it appears that the applicant is not obligated to the landlord except for rent for the lease year and that he will not incur other obligations to the landlord during such year, and when requirements set forth by the State Director authorizes the use of Form FHA 441–17 in such cases have been issued. See § 1831.12.

(n) *Assignment of or consent to payment of proceeds from the sale of products.* Form FHA 441–8, "Assignment of Proceeds from the Sale of Agricultural Products," Form FHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," or Form FHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used in accordance with § 1831.12(a)(8). Form FHA 441–21, "Transmittal of Assignment or Consent," may be used to transmit Form FHA 441–8 or Form FHA 441–18 to purchasers.

(o) *Form FHA 440–6, "Severance Agreement."* This form will be used as required by State Directors.

(1) State Directors, with the advice of the OGC, will specify the situations in which severance agreements are required under State law to comply with the requirements of Subpart A of this part, whether the severance agreement should be filed or recorded, and whether the spouse of the borrower and the spouse(s) of other party(ies) of interest also will be required to execute the severance agreement. In specifying the situations in which severance agreements will be required, consideration will be given to the actions necessary to prevent the property from becoming part of the real estate as well as to severance after it has become attached to the real estate.

(2) If severance agreements are required in accordance with the provisions of Subpart A of this part, and requirements issued by State Directors, such agreements will be executed no later than the date on which the property purchased with loan funds is delivered to the farm, or prior to the release of loan funds to the creditor, if refinancing of debts on such property is involved.

(p) *Form FHA 440–26, "Consent and Subordination Agreement."* Unless otherwise provided by requirements issued by the State Director, this form rather than a severance agreement, will be used in Uniform Commercial Code (UCC) States when a security interest is taken in property after it has become a fixture.

(1) Consent and subordination agreements will be obtained when necessary to meet the security requirements contained in Subpart A of this part as follows:

(i) Prior to the release of loan funds to the creditor, if a debt is being refinanced on an item which already has become a fixture.

(ii) Not later than the time of loan closing, in all other cases in which a security interest is being taken on an item which already has become a fixture.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before all of the following steps have been taken: The financing statement and security agreement covering the fixture have been executed, the financing statement is filed, and the payment authorization is signed by the loan approving official.

(q) *Form FHA 441–13, "Division of Income and Nondisturbance Agreement."* Form FHA 441–13 will be used when it is necessary to obtain both a division of income and a nondisturbance agreement from prior lienholders.

(r) *Form FHA 441–10, "Nondisturbance Agreement."* Form FHA 441–10 will be used when it is necessary to obtain only nondisturbance agreements from creditors of an applicant who are in a position to interfere with the applicant's operations.

(s) *Running case record entries.* In addition to the information required by Part 1801 of this chapter, the running case record also will include pertinent information concerning the applicant's tenure arrangements and proposed operations not reflected elsewhere in the loan docket.

(t) *Form FHA 441–7, "OL–EM and Other Credit Analysis."* Form FHA 441–7 will be prepared after the loan docket otherwise is completed, and will be transmitted to the Finance Office along with Forms FHA 441–1 and FHA 440–1. This form will also be transmitted to the Finance Office as prescribed in Subpart A of Part 1871 of this chapter to show the use of other credit by borrowers not receiving operating loans during the fiscal year.

(u) *Form FHA 492–19, "Characteristics of Approved Applicants."* Form FHA 492–19 will be prepared for each initial operating loan.

(v) *Taking security instruments*—(1) *Forms to be used.* Form FHA 440A25, "Financing Statement," or Form FHA 440–25, "Financing Statement," and Form FHA 440–4, or Form FHA 440–4A, "Security Agreement," as appropriate, will be used to obtain security interests in personal property in UCC States unless State requirements provide for the use of other forms. Requirements issued by State Directors also will provide information as to whether Form FHA 440A25 or Form FHA 440–25 will be used. The financing statement and security agreement together will constitute a security instrument. Although only the financing statement is required to be filed or recorded, it is necessary also to take a security agreement in order to have a complete security instrument. (See also § 1831.12(a) (2) and (6).) Forms of chattel mortgage and crop pledge will be used in the State of Louisiana in accordance with State requirements issued by the State Director.

(2) *Describing notes on security instruments.* When security agreements, chattel mortgages, or other similar security instruments are taken, all outstanding operating loan notes, and all notes representing other operating-type debts as prescribed by the respective loan making requirements will be described on such security instruments.

(3) *Describing security property on security instruments.* The printed form of the FHA Financing Statement describes certain types of collateral. If items of collateral not covered under those types are to serve as security they should be described by types or individual items in the space provided in the financing statement for that purpose. Unless otherwise prescribed by the State Director, animals, birds, fish, and so forth, should be described by groups on the security agreement. The serial or motor number should be shown on only major items of equipment. If a security interest is to be taken in property such as inventory, supplies, recreation or other nonfarm equipment or fixtures which cannot be readily described under the column headings of items 2 or 3, as appropriate, of the security agreement, an appropriate description of such property will be inserted in item 2 or 3 below the other property described in the item without regard to the column headings. The advice of the OGC will be obtained in individual cases as to how to describe in the financing statement and security agreement items such as grazing permits, milk bases, membership or stock in cooperative associations unless the method has been prescribed by the State Director. The property to be described on security instruments should be reconciled with any existing security instruments and Form FHA 462–1, "Record of the Disposition of Security Property."

(4) *When to take security instruments*—(i) *Initial loans.* In initial loan cases the financing statement may be taken at the time the loan is approved and the security agreement will be taken at the time the note is executed. When the initial security agreement does not describe individually or by groups all of the collateral that is to serve as security, an all inclusive security agreement will be taken as soon as all of the security property has been purchased. Forms of chattel mortgage and crop pledge will be taken in Louisiana in initial loan cases in accordance with State requirements issued by the State Director.

(ii) *Subsequent loans.* (*a*) Financing statements: A filed FHA Financing Statement is effective for a period of 5 years from the date of filing and as long thereafter as it is continued as provided in Subpart A of Part 1871 of this chapter. If the filed financing statement is still effective and covers all types of collateral that are to serve as security for the subsequent loan and describes the land on which crops or fixtures are or are to be located, a new financing statement will not be required. However, when a new financing statement is needed, it will be taken at the time the subsequent loan note is executed. Forms of chattel mortgage and crop pledge will be taken in Louisiana in subsequent loan cases in accordance with State requirements issued by the State Director.

(*b*) Security agreements. An additional security agreement will not be taken in connection with a subsequent loan until it is required by Subpart A of Part 1871 of this chapter, if the existing security agreement covers all types of collateral that are to serve as security for the subsequent loan, describes the land on which the crops or fixtures are or are to be located, and was taken within 1 year before the crops become growing crops, unless otherwise prescribed by the State Director.

(*c*) If a subsequent loan is being made and the operating loan indebtedness is being secured for the first time under the UCC, the procedure in subdivision (i) of this subparagraph with respect to securing initial loans will be followed.

(5) *Executing security instruments.* County Office employees in bonded positions are authorized to execute any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits, acknowledgments, and other instruments. The financing statements in UCC States will be executed on behalf of the Government. The requirements with respect to the execution of security instruments on behalf of the borrower(s) will be the same as prescribed for Form FHA 441–1.

(6) *Filing or recording security instruments.* Ordinarily, in UCC States, financing statements will be delivered or mailed to the filing officer(s) for filing or recording, whichever is appropriate, when the loan is approved. However, when this is not practical the financing statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the check to the borrower. If crops or other property of the borrower are or are to be located in a State other than that of a borrower's residence, the County Supervisor servicing the loan will contact the County Supervisor in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The financing statement will be filed or recorded in a manner required by State Directors. Security agreements will not be filed or recorded unless otherwise provided by requirements issued by State Directors because of special State law requirements. Forms of chattel mortgage and crop pledge will be filed or recorded in Louisiana as provided by State requirements issued by the State Director.

(7) *Additional actions required to perfect a purchase money security interest in inventory.* In order to properly perfect a purchase money security interest in inventory, it is necessary, on or before the time the debtor receives possession of the inventory, to obtain a security agreement and file a financing statement as required by this subpart, and notify in writing any parties known to have a security interest in such inventory or who have filed a financing statement covering the inventory that the FHA has or expects to acquire a purchase money security interest in the inventory being purchased with FHA loan funds. The notice must describe the inventory by item or type. These actions are necessary, for example, when FHA funds are advanced to purchase inventory in connection with a nonfarm enterprise and another creditor has on file a financing statement covering such inventory.

(8) *Fees.* Statutory fees for filing or recording financing statements, mortgages, or other legal instruments and notary and lien search fees incident to loan transactions in all cases will be paid by the borrower from personal funds, or from the proceeds of the loan.

(i) Whenever cash is accepted by FHA personnel to be used to pay the filing or recording fees for security instruments (including financing statements), or the cost of making lien searches, Form FHA 440–12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FHA personnel who accept custody of such fees will make it clear to the borrower that the amount so accepted is not received by the Government as credit on the borrower's indebtedness, but is accepted only for the purpose of paying the recording, filing, or lien search fees on behalf of the borrower.

(9) *Retention and use of security agreements*—(i) *Originals.* Original executed security agreements will not be altered, and will not be disposed of when new security agreements are taken.

(ii) *Work copy.* Information with respect to changes in security property will be noted only on the work copy. When an additional security agreement covering all collateral for the indebtedness is taken, the work copy used in preparing the additional security agreement may be destroyed.

(10) *Security requirements in relation to "future advance" and "after-acquired property" clauses and special State statutes.* The after-acquired property and future advance provision of security agreements in UCC States will be considered valid in all respects unless otherwise provided in a requirement issued by the State Director.

(i) *Future advance provision.* A properly prepared executed and filed or recorded FHA Financing Statement and a properly prepared and executed FHA Security Agreement to give FHA a security interest in the property described thereon to secure any operating or emergency loan indebtedness owed by the debtor, including any such future loans, advances, or expenditures without regard to whether they are evidenced by promissory notes described on the security agreements, and any other FHA debts evidenced by notes described on the security agreement and any advances or expenditures made in connection with the debts evidenced by such notes.

(ii) *After-acquired property provisions.* Any after-acquired property, except fixtures, of the same type as described (individually or by groups or specifically or generally), on the financing statement and security agreement will serve as security for the debt covered thereby. The after-acquired property clause in the security agreement will encumber crops grown on the land described in the agreement and financing statement, provided they are planted or otherwise become growing crops within 1 year of the execution date of the security agreement, or such other period as provided by State requirements. Except as set forth in § 1871.33(a)(4) of this chapter, such FHA after-acquired security interests take priority over other security interests perfected after the FHA Financing Statement was filed.

(11) *Requirements by State Office.* In addition to the State requirements referred to in other subparagraphs of this paragraph, requirements will be issued by State Directors, as necessary, to provide additional routines for taking liens on motor vehicles and motor boats, and any special type of security. The requirements also will supplement subparagraph (10) of this paragraph with respect to the "future advance" and "after-acquired property" clauses of security instruments. The State Director will set forth the requirements with respect to filing or recording of security instruments if the borrower is not a resident of the State, but is conducting some operation in the State. This is for use when County Supervisors in other States request such information in accordance with subparagraph (6) of this paragraph.

(w) *Form FHA 440-45, "Nondiscrimination Certificate (Individual Housing)."* Form FHA 440-45 will be used when an operating loan includes funds for repairs or improvement of a dwelling under provisions of § 1831.10(c).

§ 1831.33 Loan docket.

(a) The loan docket will include the forms and documents listed in instructions available in all FHA offices.

(b) The documents to be submitted will be examined thoroughly by the County Office Clerk to make sure that they are complete as to dates, signatures, and mechanical accuracy. For loans requiring approval other than in the County Office, the loan submission will consist of the required documents and all of the applicant's County Office case folders.

§ 1831.34 Review and approval or rejection.

After the documents prescribed in § 1831.33 have been assembled, the loan approval official will make the determinations required in § 1831.14.

(a) *Approval of loans.* If the loan is to be approved, the loan approval official will date and sign Form FHA 440-1 and insert his title and grade in the spaces designated for these purposes. The loan approval official also will set forth any special conditions of approval or special security requirements in the running record in the loan docket or by memorandum. Ordinarily, after approval the original of Form FHA 441-7, Form FHA 492-19, when applicable, and the original and copy of Form FHA 440-1 will be removed from the assembled loan docket and forwarded to the Finance Office together with a copy of the memorandum from the National Office authorizing approval of the loan in those cases in which such authorization is required. However, if an operating loan is being made in connection with the making of an FHA real estate loan and one loan is dependent on the other, the loan approval official may determine that the loan checks should be issued simultaneously in order to avoid unnecessary interest charges to the applicant. The operating loan docket will be held in the County Office if it is within the approval authority of the County Supervisor, or returned to the County Office after approval in other cases, and the appropriate forms will be transmitted to the Finance Office at the same time the loan check for the real estate loan is requested. When operating loan allotments are nearly exhausted, State Offices should take the necessary steps to assure that sufficient funds are retained in their allotment to pay such loans at the time the loan check is needed. However, when it is not possible to order the real estate loan check before the end of the fiscal year, the operating loan should not be approved until after the beginning of the new fiscal year.

(b) *Rejection of loans.* If a loan is rejected, the loan approval official will indicate the reasons for the rejection in the running case record in the loan docket or in a memorandum. The County Supervisor will notify the applicant of the rejection and will return to him any tenure agreements, and any executed security instruments (including the unfiled financing statement in UCC States).

§ 1831.35 Loan checks.

(a) When a check cannot be delivered or is lost or destroyed, the Finance Office will be notified immediately.

(b) If a check is to be canceled, the County Supervisor will return the check with Form FHA 440-10 to the Regional Disbursing Center, U.S. Treasury Department, Post Office Box 2509, Kansas City, MO 64142. Copies of Form FHA 440-10 will be furnished to the Finance Office and to the State Office.

§ 1831.36 Loan closing.

(a) *Check delivery.* County Office employees in bonded positions will receive and deliver loan checks. Upon receipt of a loan check, the County Supervisor will notify the applicant promptly on Form FHA 440-8, "Notice of Check Delivery." Following loan closing, when a supervised bank account is required and the depository bank does not require the borrower's endorsement for deposit, the County Supervisor may deposit the loan check in the supervised bank account and furnish the borrower a copy of the deposit slip. Loan funds for the payment of interest-only installments will be collected when the loan is closed. The receipt issued for the collection of interest will indicate: "For deferred installment interest."

(b) *Form FHA 440-13, "Report of Lien Search."* Form FHA 440-13 or other form providing substantially the same information will be prepared.

(1) Lien searches will be obtained at a time which will assure that the security instruments give the Government the required security. Under this policy the lien search normally will be obtained at the time the financing statement (mortgage or crop pledge in Louisiana) is filed or recorded. However, lien searches may be obtained after that date, but in no case later than the first withdrawal of any loan funds from the supervised bank account or delivery of the check to the borrower. Lien searches may also be obtained in connection with processing applications when such searches are determined to be necessary on an individual case basis, but in these cases it will be necessary to obtain continuation searches to meet the policy prescribed above.

(i) Under the UCC it is necessary to obtain lien searches in connection with the making of subsequent loans only in those cases in which an additional financing statement is required. This is when crops or fixtures to be taken as security are or are to be located on land not described on the existing financing statement or property not otherwise covered by the financing statement is to be taken as security for the operating loan debt.

(2) Except as otherwise provided in this subparagraph, applicants are required to obtain and pay the cost of lien searches. County Supervisors will make inquiries locally concerning the available sources through which satisfactory lien searches can be obtained at nominal cost to applicants. However, applicants should select the sources through which lien searches are made. The cost of lien searches may be paid from the proceeds of loan checks when necessary.

(i) County Office employees may make continuation lien searches when such searches are made as referred to in the last sentence of subparagraph (1) of this paragraph.

(ii) State Directors may authorize the employees of a particular County Office unit to make lien searches without cost to applicants when the cost of lien searches is exorbitant, such service is not available, or experience has shown that the service available will cause undue delay in the closing of loans or make it difficult to comply with the provisions of subparagraph (1) of this paragraph.

(3) State Directors, with the advice of the OGC, will issue requirements setting forth the minimum requirements for lien searches, including the records to be searched and the period to be covered with respect to each.

§ 1831.37 Revision in the use of operating loan funds.

(a) *Authority of the County Supervisor or Assistant County Supervisor (GS-7 or GS-9).* The County Supervisor

or Assistant County Supervisor (GS–7 or GS–9) is authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The loan was within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect the feasibility of the operation, or the Government's interest. If the County Supervisor is uncertain as to the probable effect the change would have on the feasibility of the operation or on the Government's interest, he should obtain the advice of the State Director prior to approving the change.

(b) *Authority of State Office officials.* (1) The State Director may delegate additional authority to County Supervisors to approve certain kinds of changes in the use of loan funds upon prior approval from the National Office.

(2) The State Director and employees in the State Office who have loan approval authority are authorized to approval changes in the use of loan funds provided the changes are consistent with authorities, policies, and limitations for making operating loans.

(c) *Documentation and routines.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on Form FHA 441–1 nor will a corrected Form FHA 441–7 be prepared. However, when funds loaned for the purchase of capital goods are to be used to meet operating expenses, the borrower must agree to repay the funds so used in accordance with the repayment terms prescribed in § 1831.11. Appropriate changes with respect to the repayments will be made in Table K of Form FHA 431–2 and initialed by the borrower. The County Supervisor also will make appropriate notations in the "Supervisory and Servicing Actions" section of the Management System Card—Individual for followup.

Dated: November 23, 1971.

JAMES V. SMITH,
Administrator,
Farmers Home Administration.

[FR Doc.72–11584 Filed 7–25–72;8:51 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 78—BRUCELLOSIS

Subpart B—Designation of Modified Certified Brucellosis Areas, Public Stockyards, Specifically Approved Stockyards, and Slaughtering Establishments

MODIFIED CERTIFIED BRUCELLOSIS AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended; sections 1 and 2 of the Act of February 2, 1903, as amended; and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 114a–1, 120, 121, 125), § 78.13 of said regulations designating Modified Certified Brucellosis Areas is hereby amended to read as follows:

§ 78.13 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

Alabama. The entire State;
Alaska. The entire State;
Arizona. The entire State;
Arkansas. The entire State;
California. The entire State;
Colorado. The entire State;
Connecticut. The entire State;
Delaware. The entire State;
Florida. The entire State;
Georgia. The entire State;
Hawaii. The entire State;
Idaho. The entire State;
Illinois. The entire State;
Indiana. The entire State;
Iowa. The entire State;
Kansas. The entire State;
Kentucky. The entire State;
Louisiana. The entire State;
Maine. The entire State;
Maryland. The entire State.
Massachusetts. The entire State;
Michigan. The entire State;
Minnesota. The entire State;
Mississippi. The entire State;
Missouri. The entire State;
Montana. The entire State;
Nebraska. Adams, Antelope, Arthur, Banner, Blaine, Boone, Box, Butte, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties;
Nevada. The entire State;
New Hampshire. The entire State;
New Jersey. The entire State;
New Mexico. The entire State;
New York. The entire State;
North Carolina. The entire State;
North Dakota. The entire State;
Ohio. The entire State;
Oklahoma. The entire State;
Oregon. The entire State;
Pennsylvania. The entire State;
Rhode Island. The entire State;
South Carolina. The entire State;
South Dakota. The entire State;
Tennessee. The entire State;
Texas. Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadelupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Lee, Leon, Liberty, Lipscomb, Live Oak, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, More, Morris, Motley, Nacogdoches, Navarro, Newton, Noland, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Schackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, and Zavala Counties;
Utah. The entire State;
Vermont. The entire State;
Virginia. The entire State;
Washington. The entire State;
West Virginia. The entire State;
Wisconsin. The entire State;
Wyoming. The entire State;
Puerto Rico. The entire area; and
Virgin Islands of the United States. The entire area.

(Secs. 4, 5, 23 Stat. 32, as amended; secs. 1, 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; 21 U.S.C. 111–113, 114a–1, 120, 121, 125; 29 F.R. 16210, as amended, 37 F.R. 6327, 6505, 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER (7–26–72).

The amendment deletes the following areas from the list of areas designated as Modified Certified Brucellosis Areas because it has been determined that such areas no longer come within the definition of § 78.1(i): Loup County in Nebraska and Bailey and Limestone Counties in Texas.

Blaine County in Nebraska was deleted from the list of Modified Certified Brucellosis Areas on May 18, 1972; Uvalde County in Texas was deleted from the list of Modified Certified Brucellosis Areas on June 7, 1972. Since said dates, it has been determined that these counties again come within the definition of § 78.1(i); and, therefore, they have been redesignated as Modified Certified Brucellosis Areas.

The amendment imposes certain restrictions necessary to prevent the spread

of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under the administrative procedures provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 18th day of July 1972.

J. M. HEJL,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health, Inspection Service.

[FR Doc.72-11581 Filed 7-25-72;8:51 am]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 110—UNCLASSIFIED ACTIVITIES IN FOREIGN ATOMIC ENERGY PROGRAMS

Miscellaneous Amendments

On January 5, 1972, the Atomic Energy Commission published in the FEDERAL REGISTER (37 F.R. 92) a proposed amendment to its regulations in 10 CFR Part 110, which would require specific Commission authorization to engage, directly or indirectly, in certain activities outside the United States involving the chemical processing of irradiated special nuclear material, the production of heavy water, and the separation of isotopes of uranium.

Interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments within 30 days after publication of the notice of proposed rule making in the FEDERAL REGISTER. On January 22, 1972, the Commission extended the period for submission of comments and suggestions until March 6, 1972 (37 F.R. 1059). After consideration of the comments received, the Commission has adopted the proposed amendments in the form set forth below.

The form of the amendment to 10 CFR 110.7 has been modified in some degree from that in the notice of proposed rule making. One major substantive difference is that the regulation as published will leave unaffected the general authorization contained in the present 10 CFR 110.7 to participate in meetings of or conferences sponsored by educational institutions, laboratories, scientific or technical organizations; international conferences held under the auspices of a nation or group of nations; or exchange programs approved by the Department of State.

In addition, a footnote has been added to 10 CFR 110.7(a)(2)(v) in order to clarify the scope of the new regulation with regard to private transfers of information which is subject to the disclosure requirements of the Freedom of Information Act. The footnote clarifies the regulation by stating that private transfers of such information do not require specific authorization.

In response to a number of suggestions that the Commission establish criteria governing consideration of applications for specific authorization for activities under the new 10 CFR 110.7(a), the Commission has published an amendment to 10 CFR 110.8, which sets forth such criteria. These criteria are:

1. Whether the United States has an agreement for cooperation with the country in which the proposed activity will be conducted;

2. Whether the country in which the proposed activity will be conducted is a party to the treaty on the Nonproliferation of Nuclear Weapons (NPT) and, pursuant thereto, has entered into an agreement with the International Atomic Energy Agency (IAEA) for the application of safeguards to its peaceful nuclear activities;

3. Whether the country in which the proposed activity will be conducted, if not a party to the NPT, will accept IAEA safeguards with respect to the project;

4. The relative significance of the proposed activity and availability of comparable assistance from other sources; and

5. Any other fact which may bear upon the political, economic or security interests of the United States.

These criteria have been developed with a view to providing the public with as much information as possible concerning the factors which the Commission will consider in making determinations pursuant to section 5.7.b.(2) of the Atomic Energy Act of 1954, as amended. In each case it will be necessary for the Commission to weigh the effect of each of these factors in order to make determinations with respect to inimicality.

In a further amendment to § 110.8, a new paragraph (c) has been added to state the conditions under which a specific authorization, once granted, would be revoked, suspended, or modified. This procedure will not be invoked except in cases in which the continued conduct of a specifically authorized activity would be inimical to the interests of the United States. The Commission would weigh the factors in the criteria listed in § 110.8(b) in considering any such revocation, suspension, or modification.

Finally, updating amendments have been made to 10 CFR 110.4, 110.8, and 110.10 to indicate that the cognizant division within the Atomic Energy Commission now is the Division of International Security Affairs, and to make appropriate modifications in the reporting requirements to reflect the new requirements for specific authorization.

As has been its practice in the past, the Commission will attempt, whenever consistent with the political, economic, or security interests of the United States, to encompass activities constituting an entire project in an authorization rather than require a separate authorization for each phase of a project.

The new regulation will not require specific authorization for the transmittal of information to safeguard personnel of the International Atomic Energy Agency pursuant to any agreements for the application of IAEA safeguards in the United States which may hereafter be concluded between IAEA and the United States.

Pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. sec. 553), the Commission has found that good cause exists for making this amendment effective without the customary 30-day notice. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to title 10, Chapter 1, Code of Federal Regulations, Part 110 is published as a document subject to codification to be effective upon publication in the FEDERAL REGISTER (7-26-72):

§§ 110.4, 110.8, and 110.10 [Amended]

Sections 110.4, 110.8, and 110.10 of 10 CFR Part 110 are amended by deleting "Division of International Affairs" and substituting in lieu thereof "Division of International Security Affairs."

Section 110.7 of 10 CFR Part 110 is amended to read as follows:

§ 110.7 Generally authorized activities.

(a) Pursuant to section 57.b.(2) of the Act, the Atomic Energy Commission has determined that any activity which constitutes directly or indirectly engaging in the production of any special nuclear material outside of the United States will not be inimical to the interest of the United States and is authorized by the Atomic Energy Commission: *Provided*, That it:

(1) Does not constitute directly or indirectly engaging in any such activity in any of the following countries or areas:

Albania;
Bulgaria;
China, including Manchuria (and excluding Taiwan [Formosa]) (includes Inner Mongolia; the provinces of Tsinghai and Sikang; Sinkiang; Tibet; the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning province);
Communist-controlled area of Viet Nam;
Cuba;
Czechoslovakia;
East Germany (Soviet zone of Germany and the Soviet Sector of Berlin);
Estonia;
Hungary;
Latvia;
Lithuania;
North Korea;
Outer Mongolia;
Poland;
Rumania;
Union of Soviet Socialist Republics; and

(2) Does not constitute directly or indirectly engaging in any of the following activities outside of the United States:

(i) Designing or assisting in the design of facilities for the chemical processing of irradiated special nuclear material, facilities for the production of heavy water, facilities for the separation of isotopes of uranium, or equipment or components especially designed for any of the foregoing; or

(ii) Constructing, fabricating, or operating such facilities; or

(iii) Constructing, fabricating, or furnishing equipment or components especially designed for use in such facilities; or

(iv) Training foreign personnel in the design, construction, fabrication, or operation of such facilities or equipment or components especially designed therefor; or

(v) Furnishing information not available to the public in published form[1] for use in the design, construction, fabrication or operation of such facilities or equipment or components especially designed therefor; and

(3) Does not involve the communication of Restricted Data or other classified defense information; and

(4) Is not in violation of other provisions of law.

(b) Pursuant to section 57.b.(2) of the Act, the Atomic Energy Commission has determined that any activity not generally authorized pursuant to paragraph (a) of this section, which constitutes directly or indirectly engaging in the production of any special nuclear material outside of the United States will not be inimical to the interest of the United States and is authorized by the Atomic Energy Commission, provided that it:

(1) Is limited to participation in (i) meetings of or conferences sponsored by educational institutions, laboratories, scientific or technical organizations; (ii) international conferences held under the auspices of a nation or group of nations; or (iii) exchange programs approved by the Department of State; and

(2) Does not involve the communication of Restricted Data or other classified defense information; and

(3) Is not in violation of other provisions of law.

Section 110.8 as amended, is amended by revising the title of this section to read *Grant and revocation of specific authorization,* by redesignating the present § 110.8 as § 110.8(a), and by adding new § 110.8 (b) and (c) to read as follows:

§ 110.8 Grant and revocation of specific authorization.

* * * * *

(b) The Commission will approve an application for a specific authorization to engage directly or indirectly in the production of special nuclear material outside of the United States by conducting any of the activities enumerated in § 110.7(a) if, after taking into account the following factors, it determines that such activity will not be inimical to the interest of the United States:

(1) Whether the United States has an agreement for cooperation with the country in which the proposed activity will be conducted;

(2) Whether the country in which the proposed activity will be conducted is a party to the treaty on the Nonproliferation of Nuclear Weapons (NPT) and, pursuant thereto, has entered into an agreement with the International Atomic Energy Agency (IAEA) for the application of safeguards to its peaceful nuclear activities;

(3) Whether the country in which the proposed activity will be conducted, if not a party to the NPT, will accept IAEA safeguards with respect to the project;

(4) The relative significance of the proposed activity and availability of comparable assistance from other sources; and

(5) Any other fact which may bear upon the political, economic, or security interests of the United States,

(c) An authorization pursuant to this § 110.8 may be revoked, suspended, or modified, in whole or in part:

(1) For any material false statement in the application for an authorization or in any additional information submitted pursuant to § 110.11, or

(2) If the Commission finds that the conduct of any or all of the authorized activities would be inimical to the interest of the United States.

§ 110.10 [Amended]

Section 110.10 is amended by deleting "uranium or" from paragraph (b) (1) (ii), and by deleting "heavy water" from paragraph (b) (1) (iv).

(Secs. 57, 161, 68 Stat. 932, 948, as amended; 42 U.S.C. 2077, 2201. For the purposes of sec. 223, 68 Stat. 958, as amended; 42 U.S.C. 2273, §§ 110.10 and 110.11 issued under sec. 161.0, 68 Stat. 950, as amended; 42 U.S.C. 2201(o))

Dated at Germantown, Md., this 18th day of July 1972.

For the Atomic Energy Commission.

W. B. McCool,
Secretary of the Commission.

[FR Doc.72-11508 Filed 7-25-72;8:46 am]

[1] Information which is available from the Commission pursuant to 5 U.S.C. sec. 552 shall, for purposes of § 110.7(a)(2)(v), be deemed to be information available to the public in published form.

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Regs. G, T, and U]

PART 220—CREDIT BY BROKERS AND DEALERS

Same Day Substitutions; Convertible "Hedge" Transactions

Correction

In F.R. Doc. 72-10884 appearing at page 13972 of the issue for Saturday, July 15, 1972, the following changes should be made:

1. The section heading for § 220.3, now reading "General accounts", should read "General account".

2. In § 220.3(a), the comma in the 22d line from the bottom should be deleted.

PART 220—CREDIT BY BROKERS AND DEALERS

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

Requirements for Continued Inclusion on List of OTC Margin Stocks

Correction

In F.R. Doc. 72-5840 appearing at page 7585 of the issue for Tuesday, April 18, 1972, in the first lines of §§ 220.8(b)(1) and 221.4(e)(1), the word "remains" should be deleted and the words "continues to be" substituted.

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 72-827]

PART 556—STATEMENTS OF POLICY

Satellite Offices of Federal Savings and Loan Associations

JULY 13, 1972.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 556.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 556.5) for the purpose of providing that certain portions of the Board's policy statement regarding the establishment of Federal savings and loan associations and branch office and mobile facilities of such associations shall be applicable also to satellite offices of such associations and to applications for permission to establish satellite offices of such associations. Accordingly, on the basis of such consideration and for such purpose, the Board hereby amends said § 556.5 by adding, immediately after paragraph (b) thereof, a new paragraph (c), to read as follows:

§ 556.5 Establishment of Federal savings and loan associations and branch office and mobile facilities of such associations.

* * * * *

(c) *Satellite offices.* The provisions of paragraphs (a) and (b)(1) of this sections relating to branch offices and to applications for permission to establish branch offices shall be applicable also to satellite offices and to applications for permission to establish satellite offices.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.72-11556 Filed 7-25-72;8:49 am]

SUBCHAPTER E—DISTRICT OF COLUMBIA SAVINGS AND LOAN ASSOCIATIONS AND BRANCH OFFICES

[No. 72-828]

PART 582b—STATEMENTS OF POLICY

Satellite Offices of District of Columbia Associations

JULY 13, 1972.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 582b.3 of the regulations for District of Columbia Savings and Loan Associations and Branch Offices (12 CFR 582b.3) for the purpose of providing that the Board's policy statement regarding the internal processing procedure for applications for branch offices of District of Columbia associations shall be applicable also to satellite offices and to applications for permission to establish satellite offices of such associations. Accordingly, on the basis of such consideration and for such purpose, the Federal Home Loan Bank Board hereby amends said § 582b.3 by adding, immediately after paragraph (g) thereof, a new paragraph (h), to read as follows:

§ 582b.3 Internal processing procedure for applications for branch offices.

The Board deems it advisable that applicants for permission to establish branch offices, and persons who are interested in such applications, be informed of certain general instructions by the Board governing staff handling of applications and of the timetable for handling applications which the Board has adopted as an objective as follows:

* * * * *

(h) *Satellite offices.* The provisions of this section relating to branch offices and to applications for permission to establish branch offices shall be applicable also to satellite offices and to applications for permission to establish satellite offices.

(Sec. 5, 48 Stat. 132, as amended, sec. 8, 48 Stat. 134, as added by sec. 913, 84 Stat. 1815; 12 U.S.C. 1464, 1466a. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.72-11557 Filed 7-25-72;8:49 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Colloidal Ferric Oxide Injection, Veterinary

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (15-035V) filed by Norden Laboratories, Inc., Lincoln, Nebr. 68501, proposing the safe and effective use of colloidal ferric oxide injection, veterinary, to prevent and treat anemia in baby pigs. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended by adding the following new section:

§ 135b.61 Colloidal ferric oxide injection, veterinary.

(a) *Specifications.* Each milliliter of the drug contains colloidal ferric oxide equivalent to 100 milligrams of iron stabilized with a low-viscosity dextrin and contains 0.5 percent phenol as a preservative.

(b) *Sponsor.* See code No. 026 in § 135.501(c) of this chapter.

(c) *Conditions of use.* It is used in baby pigs as follows:

(1) For the prevention of anemia due to iron deficiency, administer an initial intramuscular injection of 1 milliliter of the drug to each animal at any time between 2 to 5 days of age. Dosage may be repeated at 2 weeks of age.

(2) For the treatment of anemia due to iron deficiency, administer an intramuscular injection of from 1 to 2 milliliters of the drug to each animal at any time between 5 to 28 days of age.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (7-26-72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: July 18, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72-11516 Filed 7-25-72;8:45 am]

SUBCHAPTER E—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES: DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Asbestos-Containing Garments for General Use; Classification as Banned Hazardous Substances

In the matter of classifying general-use garments containing asbestos as banned hazardous substances because inhalation of asbestos fibers can cause lung cancer, mesothelioma, and lung fibrosis:

Twenty-nine comments were received in response to the notice of proposed rulemaking published in the FEDERAL REGISTER of February 18, 1972 (37 F.R. 3645). Eleven generally favor the proposal; one opposes it as a waste of time.

Fourteen comments express concern that adoption of the proposal would prohibit use of asbestos-containing garments such as gloves, aprons, leggings, jackets, and suits that are used for protection of personnel from thermal injury in the metals and foundaries industries, commercial laboratories, and other industrial and commercial locations. This is not the case, however, because such uses are not household uses and are therefore not subject to the Federal Hazardous Substances Act and regulations thereunder.

Several responses state that asbestos is used in household garments such as barbeque mitts for thermal protection, but that such articles can be so constructed (for example, by resin-bonding the fibers) that the fibers are "locked in" to prevent an inhalation hazard. The Commissioner agrees that such garments do not present an inhalation hazard to the extent that dissemination of airborne asbestos fibers is prevented by suitable means, and the regulation has been changed accordingly.

Although it does not oppose the proposal, the Asbestos Information Association/North America comments that the report of the ad hoc committee does not support the statement in the proposal that the committee concluded that asbestos in general-use garments "presented an unwarranted hazard of toxicity." On the other hand, the comments of the Health Research Group demands that the Commissioner (1) immediately declare such garments an imminent hazard, (2) disseminate information under section 13 of the act to alert the public about the imminent health danger, and (3) promulgate repurchase regulations under section 15 of the act.

In its report, the ad hoc committee concluded that the single episode of manufacture and sale of asbestos-containing garments which occurred did not constitute an "imminent hazard" as defined in § 3.73 (21 CFR 3.73) and that a recommendation to recover all the garments from the individual purchasers was not warranted. The committee pointed out that while the tests used on the coats were deliberately designed to be many orders of magnitude severer in terms of applying energy to the garments than would be expected in ordinary use by the public and that while the resultant fiber concentrations were nearly all below the threshold limit value currently set for occupational exposure, it was not prudent to countenance such inappropriate additions of asbestos fiber to the air. The committee therefore strongly recommended that further use of asbestos yarn in garments manufactured for wear by the general public be

forbidden and, to the degree feasible, that unsold coats and unsold asbestos-containing fabric that might be used in such coats be removed from the marketplace.

With respect to repurchase, since section 15 applies to all banned hazardous substances and is in any event not enforceable by the Commissioner under the act, it would be inappropriate to make any provision concerning repurchase in any regulation relating to a banned hazardous substance.

Having considered the information cited in the proposal, the committee report, the comments received, and other relevant material, the Commissioner finds that notwithstanding such cautionary labeling as is or may be required under the Federal Hazardous Substances Act, the degree or nature of the hazard involved in the presence or use of asbestos-containing garments for general use in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substances, when so intended or packaged, out of the channels of interstate commerce. The Commissioner therefore concludes that the banning should be adopted as set forth below.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (sec. 2(q) (1) (B), (2), 74 Stat. 374, as amended, 80 Stat. 1304–05; 15 U.S.C. 1261) and of the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended; 21 U.S.C. 371(e)), and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered,* That § 191.9 be amended by revising the introductory text of paragraph (a) and by adding a new subparagraph (7) to paragraph (a), as follows:

§ 191.9 Banned hazardous substances.

(a) Under the authority of section 2(q) (1) (B) of the act, the Commissioner declares as banned hazardous substances the following articles because they possess such a degree or nature of hazard that adequate cautionary labeling cannot be written and the public health and safety can be served only by keeping such articles out of interstate commerce:

* * * * *

(7) General-use garments containing asbestos (other than garments having a bona fide application for personal protection against thermal injury and so constructed that the asbestos fibers will not become airborne under reasonably foreseeable conditions of use).

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies. Received responses may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective 60 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Sec. 2(q) (1)(B), (2), 74 Stat. 374, as amended 80 Stat. 1304–05, 15 U.S.C. 1261; sec. 701(e), 52 Stat. 1055, as amended, 21 U.S.C. 371(e))

Dated: July 20, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-11517 Filed 7-25-72;8:46 am]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.670]

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Miscellaneous Amendments

Parts 41 and 42, Chapter I, Title 22 of the Code of Federal Regulations are amended (1) to delete the requirement that a report be submitted to the Department in cases of applicants for visas under section 101(a) (15) (K) of the Act, who are found to be ineligible to receive an immigrant visa, and (2) to require that physicians approved by a consular officer for the performance of medical examinations of alien visa applicants must have, or have available, the facilities necessary for certain tests.

1. Paragraph (d) of § 41.66 is amended to read:

§ 41.66 Fiancee or fiance of a United States citizen.

* * * * *

(d) If it is determined that the alien would be eligible in all respects to receive an immigrant visa, the consular officer may issue a nonimmigrant visa under the provisions of this section to the alien.

2. Paragraph (c) of § 41.113 is amended to read:

§ 41.113 Medical examinations.

* * * * *

(c) A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless such physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

3. Paragraph (c) of § 42.113 is amended to read:

§ 42.113 Medical examinations.

* * * * *

(c) A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless such physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

Effective date. The amendments to the regulations contained in this order shall become effective upon publication in the FEDERAL REGISTER (7–26–72).

The provisions of the Administrative Procedure Act (80 Stat. 383; 5 U.S.C. 553) relative to notice of proposed rule making are inapplicable to this order because the regulations contained herein involve foreign affairs functions of the United States.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104)

For the Secretary of State.

[SEAL] WILLIAM N. DALE,
Acting Administrator, Bureau of Security and Consular Affairs, Department of State.

JULY 14, 1972.

[FR Doc.72-11555 Filed 7-25-72;8:48 am]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 606—ELECTRICAL, INSTRUMENT, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 622 (36 F.R. 19037) and Administrative Order No. 623 (37 F.R. 7004), the Secretary of Labor appointed and convened Industry Committee No. 110–B for the Electrical, Instruments and Related Products Industry in Puerto Rico, referred to the committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matter referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 110–B are hereby published, amending § 606.1 and subdivision (i) of subparagraph (4) of paragraph (a) of § 606.2 of Title 29, Code of Federal Regulations.

1. As amended, § 606.1 reads as follows:

§ 606.1 Definition.

The electrical, instrument, and related products industry in Puerto Rico is defined as follows: The manufacture, assembling, and repair of machinery, apparatus, equipment, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy; and the manufacture, assembly, and repair of instruments, lenses, apparatus, and equipment for scientific, professional, industrial measurement, photographic, ophthalmic, musical, and horological purposes: *Provided, however,* That the industry shall not include industrial and commerical machinery powered by electric motors; measuring-and-dispensing pumps; ophthalmic frames; or any activity included in the stone, clay, glass, cement, and related products industry (Part 678 of this chapter).

2. As amended, § 606.2(a)(4) reads as follows:

§ 606.2 Wage rates.

* * * * *

(a) * * *

(4) *Classification D.* (i) The minimum wage for this classification is $1.60 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.72–11525 Filed 7–25–72;8:46 am]

PART 670—CHEMICAL, PETROLEUM, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp. p. 1004), and by means of Administrative Order No. 622 (36 F.R. 19037) and Administrative Order No. 623 (37 F.R. 7004), the Secretary of Labor appointed and convened Industry Committee No. 110–B for the Chemical, Petroleum, and Related Products Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c), of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 110–B are herey published, amending paragraph (d) of § 670.2.

As amended, § 670.2(d) reads as follows:

§ 670.2 Wage rates.

* * * * *

(d) *1966 coverage classification.* (1) The minimum rate for this classification is $1.60 an hour.

(2) This classification is defined as all activities in the chemical, petroleum, and related products industry in Puerto Rico, to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July, 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.72–11526 Filed 7–25–72;8:46 am]

PART 677—PAPER, PAPER PRODUCTS, PRINTING AND PUBLISHING INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 622 (36 F.R. 19037) and Administrative Order No. 623 (37 F.R. 7004), the Secretary of Labor appointed and convened Industry Committee No. 110–B for the Paper, Paper Products, Printing and Publishing Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 110–B are hereby published, amending § 677.1 and subparagraph (1) of paragraph (b) of § 677.2 of Title 29, Code of Federal Regulations.

1. As amended, § 677.1 reads as follows:

§ 677.1 Definition.

The paper, paper products, printing and publishing industry in Puerto Rico is defined as follows: The manufacture of pulp from woods, rags, bagasse, and other fibers; the conversion of such pulp into paper, paperboard, and building board; the manufacture of paper, paperboard, and pulp into bags, boxes, containers, tags, cards, envelopes, pressed and molded pulp goods, and all other converted paper products; the printing performed on the foregoing and on allied products; the printing or publishing of newspapers, books, periodicals, maps, and music; and all manufacturing and service operations performed by typesetters, advertising typographers, electrotypers, stereotypers, photoengravers, steel and copper plate engravers, commercial printers, lithographers, gravure printers, private printing plants of concerns engaged in other business, binderies, and news syndicates: *Provided, however,* That the industry shall not include any product or activity included in the leather, leather goods, and related products industry (Part 602 of this chapter).

2. As amended, § 677.2(b)(1) reads as follows:

§ 677.2 Wage rates.

* * * * *

(b) *1961 coverage classification.* (1) The minimum rate for this classification is $1.60 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July, 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.72–11527 Filed 7–25–72;8:46 am]

PART 678—STONE, CLAY, GLASS, CEMENT AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order

No. 622 (36 F.R. 19037) and Administrative Order No. 623 (37 F.R. 7004), the Secretary of Labor appointed and convened Industry Committee No. 110–B for the Stone, Clay, Glass, Cement, and Related Products Industry in Puerto Rico, referred to the committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 110–B are hereby published, amending § 678.1 and subdivision (i) of subparagraph (4) subdivision (i) of subparagraph (5), and subdivision (i) of subparagraph (6) of paragraph (a); subparagraph (i) of paragraph (c) and subdivision (i) of subparagraph (2) of paragraph (d) of § 678.2, Title 29, Code of Federal Regulations.

1. As amended, § 678.1 reads as follows:

§ 678.1 Definition.

The stone, clay, glass, cement, and related products industry in Puerto Rico is defined as follows: The mining, quarrying, or other extraction and the further processing of all minerals (other than metal ores, chemical and fertilizer minerals, coal, petroleum, or natural gases) and the manufacture of products from such minerals, including but without limitation, structural clay products, china, pottery, tile, and other ceramic products and refractories; glass and glass products (except lenses); dimension and cut stone; crushed stone; sand and gravel; hydraulic cement; abrasives, lime, concrete, gypsum, mica, plaster, and asbestos products; and the manufacture of products from bone, horn, ivory, shell, and similar natural materials: *Provided, however,* That the industry shall not include any product or activity included in the jewelry, decorations, brushes, and novelties industry (Part 613 of this chapter); the construction industry (Part 726 of this chapter); the metal, machinery, transportation equipment, and allied products industry (Part 604 of this chapter); or the chemical, petroleum, and related products industry (Part 670 of this chapter).

2. As amended, § 678.2 reads as follows:

§ 678.2 Wage rates.

* * * * *

(a) * * *

(4) *Vitreous and semivitreous china food utensils classification.* (i) The minimum wage for this classification is $1.60 an hour.

* * * * *

(5) *Art pottery classification.* (i) The minimum wage for this classification is $1.25 an hour.

* * * * *

(6) *Mica classification.* (i) The minimum wage for this classification is $1.60 an hour.

* * * * *

(c) *General 1961 coverage classification.* (1) The minimum wage for this classification is $1.55 an hour.

* * * * *

(d) *1966 coverage classification.* * * *

(2) *General classification.* (i) The minimum wage for this classification is $1.55 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July, 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.72-11528 Filed 7-25-72;8:47 am]

PART 689—SUGAR MANUFACTURING INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp. p. 1004), and by means of Administrative Order No. 622 (36 F.R. 19037), the Secretary of Labor appointed and convened Industry Committee No. 109–B for the Sugar Manufacturing Industry in Puerto Rico, referred to the committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 109–B are hereby published, amending subparagraph (1) of paragraph (a) and subparagraph (1) of paragraph (b) of § 689.2 of Part 689, Code of Federal Regulations.

As amended § 689.2 reads as follows:

§ 689.2 Wage rates.

* * * * *

(a) *Pre-1966 coverage classification.* (1) The minimum rate for this classification is $1.55 an hour.

* * * * *

(b) *1966 coverage classification.* (1) The minimum rate for this classification is $1.55 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July, 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, United States Department of Labor.

[FR Doc.72-11529 Filed 7-25-72;8:47 am]

PART 727—AGRICULTURE INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 624 (37 F.R. 8679), the Secretary of Labor appointed and convened Industry Committee No. 109–C for the Tobacco and Coffee Farms in the Agriculture Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 109–C are hereby published, amending subdivision (i) of subparagraph (3) of paragraph (d) and subdivision (i) of subparagraph (3) of paragraph (e) of § 727.2 of Title 29, Code of Federal Regulations.

As amended, § 727.2 reads as follows:

§ 727.2 Wage rates.

* * * * *

(d) *Tobacco farms.* * * *

(3) *Other workers classification.* (i) The minimum rate for this classification is $1.05 an hour.

* * * * *

(e) *Coffee farms.* * * *

(3) *Other workers classification.* (i) The minimum rate for this classification is $1.05 an hour.

* * * * *

(Sec. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July, 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, United States Department of Labor.

[FR Doc.72-11530 Filed 7-25-72;8:47 am]

PART 727—AGRICULTURE INDUSTRY IN PUERTO RICO

Wage Order for Sugarcane Farming Industry

Pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp. p. 1004), and by means of Administrative Order No. 622 (36 F.R. 19037), the Secretary of Labor appointed and convened Industry Committee No. 109-A for the Sugarcane Farming Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938; Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 109-A are hereby published, revising §§ 727.2a and 727.3 of Title 29, Code of Federal Regulations.

1. As revised, § 727.2a reads as follows:

§ 727.2(a) Sugarcane farming industry.

(a) *Definition.* The sugarcane farming industry in Puerto Rico is defined as follows: The preparation of the soil, the planting and cultivating of sugarcane (all work related to the growing and maturing of the crop), the harvesting of sugarcane (cutting, piling, loading, transloading, and all transportation by or for the account of the grower to the point at which title to the sugarcane passes to others), and any other work related to the production and delivery of sugarcane by the grower performed on a farm as an incident to or in conjunction with the farming operations of the grower.

(b) *Wage rates.* (1) *Principal operators of mechanical loaders, harvesters, and sowers classifications.* (i) The minimum rate for this classification is $1.20 an hour.

(ii) This classification is defined as all activities on sugarcane farms performed by principal operators of mechanical loaders, harvesters, and sowers.

(2) *Operators of mechancial equipment except mechanical loaders, harvesters, and sowers classification.* (i) The minimum rate for this classification is $1 an hour.

(ii) This classification is defined as all activities on sugarcane farms performed by all operators of mechanical equipment such as tractors, tractor plows, fertilizing machines, herbicide spraying machines, and trucks including also heavy mechanical equipment.

(3) *Other workers classification.* (i) The minimum rate for this classification is $0.70 an hour.

(ii) This classification is defined as all activities on sugarcane farms except those included in the other two sugarcane farm classifications.

2. As revised § 727.3 reads as follows:

§ 727.3 Notices.

Every employer subject to the provisions of §§ 727.2 and 727.2a shall post in a conspicuous place in each department of his establishment where employees subject to the provisions of §§ 727.2 and 727.2a are working such notices of this part as shall be prescribed from time to time by the Administrator of the Wage and Hour Division of the U.S. Department of Labor and shall give such other notice as the Administrator may prescribe.

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208)

Effective date. This amendment shall become effective upon the expiration of 15 days after the date of publication.

Signed at Washington, D.C., this 20th day of July, 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.72-11531 Filed 7-25-72;8:47 am]

Title 30—MINERAL RESOURCES

Chapter V—Interim Compliance Panel (Coal Mine Health and Safety)

SUBCHAPTER A—COAL MINE HEALTH

PART 502—PERMITS FOR NONCOMPLIANCE WITH 2.0 mg./m.³ RESPIRABLE DUST STANDARD

Correction

In F.R. Doc. 72-11053 appearing at page 14526 of the issue for Thursday, July 20, 1972, two corrections are to be made:

1. The third line of § 502.4(h) should read, "achieve compliance with the 2.0 mg./m.³" instead of "achieve compliance with the 2.5 mg./m.³"; and

2. The first word of § 502.9(b) should be "When" instead of "With".

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGD 71-120a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Sheboygan River, Wis.

The amendment changes the regulations for the Eighth Street Bridge across the Sheboygan River at Sheboygan, Wis. This amendment was circulated as a public notice dated November 4, 1971, by the Commander, Ninth Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 71-120) on October 30, 1971, (36 F.R. 20893).

The Coast Guard proposed that one draw of this bridge be opened according to a specified schedule. This has been changed to provide that both draws shall be opened, because the Sheboygan Yacht Club expressed concern that proceeding through the bridge with one draw open is difficult and dangerous. The request of the Sheboygan Yacht Club that the manned season be April 1 to November 30, rather than May 1 to October 30, is rejected because there are not enough openings to justify the cost of manning the bridge those 2 months. The request of the same organization that the bridge open on 1-hour notice is not agreed to, and instead 2 hours' notice is adopted because 2 hours is required for a drawtender to get to the bridge and open it. An objection was received from the Lakeshore Hunting and Fishing Club favoring opening on signal from 10 p.m. to 6 a.m. Their request is not granted because there are not enough openings at those hours to justify the cost of manning the bridge continuously. The bridge will open on 2-hour notice at all times. No other objections were received.

Accordingly, Part 117 of Title 33, of the Code of Federal Regulations is amended by revising § 117.652 to read as follows:

§ 117.652 Sheboygan River, Wis.; Eighth Street Bridge at Sheboygan, Wis.

(a) From May 1 through October 30 from 6 a.m. to 10 p.m. the draws shall open on signal.

(b) The draws shall open on signal at all other times of the year if at least 2 hours' notice has been given.

(c) Signals.

(1) The opening signal is one long blast followed by one short blast.

(2) The acknowledging signal when the draw will open is one long blast followed by one short blast.

(3) The acknowledging signal when the draw will not open or is open and must close is four blasts. When the draw can open, the signal is one long blast followed by one short blast.

(4) The signals may be made by a whistle, horn, or bell, or by shouting.

(d) The owner of or agency controlling the bridge shall conspiciously post notices containing the substance of these regulations, both upstream and downstream, on the bridge or elsewhere, in such a manner that they can be easily read at all times from an approaching vessel.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655 (g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date. This revision shall become effective on September 1, 1972.

Dated: July 11, 1972.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief Office of Marine Environment and Systems.

[FR Doc.72-11542 Filed 7-25-72;8:48 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER C—AIR PROGRAMS

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Standard for Sulfur Dioxide; Correction

The new source performance standard published December 23, 1971 (36 F.R. 24876), which is applicable to sulfur dioxide emissions from fossil-fuel fired steam generators, incorrectly omits provision for compliance by burning natural gas in combination with oil or coal. Accordingly, in § 60.43 of Title 40 of the Code of Federal Regulations, paragraph (c) is revised and a new paragraph (d) is added, as follows:

§ 60.43 Standard for sulfur dioxide.

* * * * *

(c) Where different fossil fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

$$\frac{y(0.80) + z\,(1.2)}{y + z}$$

where:

y is the percent of total heat input derived from liquid fossil fuel and,

z is the percent of total heat input derived from solid fossil fuel.

(d) Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.

This amendment shall be effective upon publication in the FEDERAL REGISTER (7-25-72).

Dated: July 19, 1972.

JOHN QUARLES, Jr.,
Acting Administrator.

[FR Doc.72-11381 Filed 7-25-72;8:49 am]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER A—GENERAL PROVISIONS

[Docket No. 71-33; General Order 16, Amdt. 9]

PART 502—RULES OF PRACTICE AND PROCEDURE

Formal and Informal Procedures for Adjudication of Small Claims

On April 7, 1971, the Federal Maritime Commission published in the FEDERAL REGISTER (36 F.R. 6594) a notice of proposed rule making, wherein it was suggested that in order to expedite the adjudication of small claims under Subpart S of Part 502 of the rules of practice and procedure, an "adjudicator" be substituted for the hearing examiner. The term "adjudicator" has since been changed to "settlement officer".

The "settlement officer" is to be a Commission representative designated and duly authorized for the purpose of hearing informal complaints. The delegation of such persons is by authority of section 105 of Reorganization Plan No. 7 of 1961 (75 Stat. 840).

Written comments on the proposed amendment were invited and received from interested parties. The Commission has carefully considered the comments which were submitted and are on file. These comments are discussed below. The change of the term "adjudicator" to "settlement officer" is merely a technical one. All references to "adjudicator" have been changed to reflect the use of the new designation.

One commentator felt that a "settlement officer" might lack the high degree of experience, ability, and impartiality of a hearing examiner. Further, it was claimed that individual staff members delegated as "settlement officers" might tend toward settlement of small claims by negotiation and compromise. The former argument is simply not valid. Certainly, delegation of such an important function would be to only those qualified through their expertise to properly adjudicate such claims. There is no ground whatsoever for claiming that such persons would be less than impartial in their dealings with the parties involved. The argument that individual staff members delegated as "settlement officers" might tend toward settlement of small claims by negotiation and compromise is answered by reference to section 5(b) of the Administrative Procedure Act (APA), which clearly provides for settlement by consent.

Another commentator contended that delegation of the adjudicatory function to a person other than a hearing examiner contravenes the APA and is therefore prohibited by the proviso in section 105 of Reorganization Plan No. 7 of 1961, which proscribes any delegation of functions that would supersede the section 7(a) provisions of the APA with respect to hearing. The informal small claims procedure presided over by "settlement officers" does not violate the APA because it is a wholly consensual procedure; i.e., the complainant may elect to proceed with Subpart T (formal procedure), or, if the complainant proceeds under Subpart S, the respondent may refuse to have the claim determined under Subpart S, thus necessitating the use of the formal procedure.

The APA section 7 mandate as to competent examiners applies only where hearings are required by some other statute, or by section 4 or 5 of the APA. The informal proceeding is not required by statute or by the APA, but is elected by the parties. In practical effect, the Subpart S procedure can be considered an extension of the settlement by consent provision of section 5(b) of the APA.

An additional suggestion offered by one commentator was that the Commission provide for the shipper to receive a copy of the carrier's answer to any complaint filed by the shipper and that the shipper then be allowed to submit a rebuttal to the carrier's answer to the complaint. This suggestion is in derogation of the tenor of the informal procedure, the basic purpose of which is the expeditious handling of small claims. Under § 502.304(f), the carrier is required to file its answer with the Commission only. Since the "settlement officer" is to decide the issue on the basis of the initial pleading (complaint and answer plus any other information desired by the "settlement officer" under § 502.304(f)) and, since no reply to the answer is allowed under Subpart S, no service of answer upon the shipper need be required.

As for the suggestion that the Commission temporarily allow for either party to request review of an initial decision, we feel this too is unwarranted and in derogation of the substance of the informal procedure; i.e., expeditious adjudication of small claims.

With respect to the remaining suggestions offered, since this rulemaking is intended only to substitute "settlement officers" for hearing examiners, we submit that this is not the proper forum for modifying other of our rules of practice and procedure.

Therefore, pursuant to section 105 of Reorganization Plan No. 7 of 1961 (75 Stat. 840); sections 3 and 4 of the Administrative Procedure Act, 5 U.S.C. 552, 553; and section 43 of the Shipping Act, 1916, 46 U.S.C. 841a, Subparts S and T of Part 502 of title 46 CFR are hereby amended as follows:

1. Section 502.301 is revised to read as follows:

§ 502.301 Policy.

Claims against common carriers subject to the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, in the amount of $1,000 or less, for the recovery of damages (not including claims for loss of or damage to property), or for the recovery of overcharges, will with the written consent of all parties, be determined, pursuant to this subpart, by Settlement Officers, to be delegated by the Commission, without the necessity for formal proceedings under the rules of this part. Determination of such claims under Subparts S and T of this part shall be administratively final and conclusive.

§ 502.304 [Amended]

2. In paragraphs (a), (d), (e), (f), and (g), and Appendixes A and B of § 502.304 *Procedure,* the term "Settlement Officer" is substituted for "Hearing Examiner"; and in paragraph (b) of § 502.304 *Procedure,* the address is changed to read, 1405 "I" Street NW., Washington, DC 20573.

3. The first sentence of § 502.311 *Applicability,* is amended to read:

§ 502.311 Applicability.

In the event the carrier elects not to consent to determination of the claim under Subpart S of this part, it shall be adjudicated by Hearing Examiners of the Commission under procedures set forth in this subpart * * *.

Effective date. In view of the fact that these amendments in no way substantially change any existing requirements but are merely of a technical nature, the Commission believes good cause exists for the amendments promulgated herein to become effective on less than 30 days' notice. Accordingly, these amendments shall become effective upon publication in the FEDERAL REGISTER (7-26-72).

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-11567 Filed 7-25-72;8:49 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 915]

AVOCADOS GROWN IN SOUTH FLORIDA

Proposed Packing and Handling Limitations

Consideration is being given to the following proposal submitted by the Avocado Administrative Committee, established under the amended marketing agreement and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposal reflects the committe's current appraisal of present and prospective marketing conditions for avocados. Seasonal shipments of avocados in limited volume are now in progress. The committee recently completed research designed to develop an acceptable range of sizes of containers for marketing avocados. The research, conducted in cooperation with handlers of Florida avocados, indicated there is a need to amend § 915.305 Avocado Order 5 (Container Regulation; 29 F.R. 8463; 32 F.R. 13180; 32 F.R. 14548; 32 F.R. 15871; 36 F.R. 22669), of the marketing agreement and order, to provide an additional size container for handling 34 pounds of avocados. The Avocado Administrative Committee, on July 12, 1972, unanimously recommended the proposal to amend the aforesaid regulation to provide the additional container. The new container has larger width and slightly smaller depth dimensions and a different style of construction than the currently authorized containers. The larger volume handlers report the 13½ x 16½ x 9 inches container is faster and less costly to set up in their packing operations, and it is more efficient in utilization of pallet surface area. The smaller volume handlers report that the currently authorized containers are satisfactory in their packing and handling operations, and they wish to retain the authority to use such containers. Thus, the committee proposes that Avocado Order 5, be amended as follows:

1. It is proposed that the provisions of pararaph (a) (1) (i) of § 915.305 (Avocado Order 5; 29 F.R. 8463; 32 F.R. 13180; 32 F.R. 14548; 32 F.R. 15871; 36 F.R. 22669) be amended to read as follows:

§ 915.305 Avocado Order 5.

(a) *Order.* (1) * * *

(i) Containers with inside dimensions of 11⅜ x 16 x 11 or 11 x 16¾ x 10 or 13½ x 16½ x 9 inches: *Provided,* That (*a*) the net weight of the avocados in such a container shall be not less than 34 pounds, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1 and Fuchs, such weight shall be not less than 32 pounds; (*b*) with respect to each lot of such containers, not to exceed 10 percent, by count, of the individual containers in the lot may fail to meet the applicable specified weight but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight; and (*c*) each avocado in such container in a lot shall weigh at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in the lot may fail to meet such weight requirement but not more than double such tolerance shall be permitted for an individual container in the lot.

* * * * *

All persons who desire to submit written data, views, or arguments for consideration in connection with the aforesaid proposal may do so, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the close of business on the 15th day after publication thereof in FEDERAL REGISTER. All such communications will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

Dated: July 21, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-11580 Filed 7-25-72;8:51 am]

[7 CFR Part 919]

HANDLING OF PEACHES GROWN IN MESA COUNTY, COLO.

Expenses and Rate of Assessment for the 1971–72 Fiscal Period

Consideration is being given to the following proposals submitted by the Administrative Committee, established under the marketing agreement, as amended, and Order No. 919, as amended (7 CFR Part 919), regulating the handling of peaches grown in the county of Mesa in the State of Colorado, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses that are reasonable and likely to be incurred by the Administrative Committee during the period December 1, 1971, through November 30, 1972, will amount to $850.

(2) That there be fixed, at $0.02 per hundredweight of peaches, the rate of assessment payable by each handler in accordance with § 919.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

Dated: July 20, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-11534 Filed 7-25-72;8:47 am]

[7 CFR Part 989]

[Docket No. AO 198-A7]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Recommended Decision and Opportunity To File Comments Regarding Proposed Amendment of Marketing Agreement and Order

Pursuant to the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk, U.S. Department of Agriculture, of this recommended decision with respect to the proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), hereinafter referred to as the "act," and any amendment which may result from this proceeding also will be effective pursuant to the act.

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the close of business on the 15th day after publication of this recommended decision in the FEDERAL

REGISTER. Exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The public hearing, on the record of which the proposed amendment is formulated, was held in Fresno, Calif., March 28–29, 1972. Notice of the hearing was published in the FEDERAL REGISTER on March 14, 1972 (37 F.R. 5300). The proposals in the notice of hearing were submitted by the Raisin Administrative Committee (hereinafter referred to as the "Committee"), the agency established pursuant to the order to administer the terms and provisions thereof.

Material issues. The material issues presented on the record of the hearing involve amendatory action relating to:

(1) Amending the definition of "raisins";

(2) Providing for making changes in the dehydrator representation on the Raisin Advisory Board and the Raisin Administrative Committee;

(3) Volume regulation, including changing the date by which desirable free tonnage for a crop year must be recommended; deleting reference to 140,000 tons as the desirable free tonnage; establishing preliminary free and reserve percentages at specific levels;

(4) Providing for a weight dockage system applicable to lots of natural condition raisins which do not meet incoming maturity requirements;

(5) The quality of raisins which may be disposed of by handlers for use in making raisin paste;

(6) Including the term "other failing raisins" in a definition and provisions pertaining to disposition of certain raisins;

(7) Revising the provisions pertaining to exemption of raisins in certain packs, from certain order requirements;

(8) Revising provisions regarding holding and storing of reverse raisins transferred from one handler to another; fumigating reserve raisins; and relocating reserve raisins;

(9) Revising provisions pertaining to disposition of reserve raisins, including certain supply reallocations; changing some of the methods of offering reserve tonnage to handlers; providing the Committee with certain freight and delivery options; and providing for sale of reserve raisins for free tonnage use under specific circumstances;

(10) Changing the date regarding assessment date for property taxes on reserve raisins; and

(11) Making such changes in the order as may be necessary to bring the entire order, as amended, into conformity with the amendatory action resulting from the hearing.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) Section 989.5 of the order defines (the term) "raisins" to mean grapes of any variety grown in the area, from which a part of the natural moisture has been removed by sun-drying or artificial dehydration after such grapes have been removed from the vines. This definition includes most of the dried fruit produced from grapes grown in California. Excluded from the definition is a small quantity of fruit which dries on the grapevine sufficiently to take on the appearance of raisins before being removed from the vine. This dried fruit resembles raisins and is referred to by the industry as "dried grapes".

Most of the dried grapes produced in California are a residual of the fresh shipping in southern California, which includes the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego. Grapes remaining on the vine after harvest in southern California are allowed to dry and are picked in the fall. In the past, these dried grapes primarily were exported to Mexican border towns where they were hand-sorted, stemmed, and used for human consumption. However, during the last 2 years, about 600 tons of dried grapes from southern California were delivered to raisin packers in the San Joaquin Valley and disposed of in raisin outlets in competition with raisins regulated by the order. Because the raisin order does not regulate dried grapes, these deliveries were not subject to the requirements of the order, including inspection and certification for grade and condition, volume regulation and payment or assessments by handlers.

During the past few years, research has been conducted in mechanical harvesting of raisins or of grapes for use in making raisins. In one of the most important methods developed, the canes of grapevines are cut and the grapes allowed to dry on the vine. This facilitates removal of the dried grapes (i.e., raisins) from the vine by mechanical means. However, such dried grapes (i.e., raisins) are not included in the definition of "raisins" and thus, with increased use of this method of mechanical harvesting, a substantial portion of California's raisin production would not be regulated under the order. Both of these categories of dried grapes should be covered by the order. Therefore, the definition of "raisins" in § 989.5 should be revised to mean grapes of any variety grown in the area, from which a significant part of the natural moisture has been removed by sun-drying or artificial dehydration, either prior to or after such grapes have been removed from the vines.

Raisins produced in southern California and delivered to raisin packers should be regulated under the order. The evidence of record is that it is not essential to regulate those raisins produced in southern California which are disposed of for distillation, livestock feed, or by export in natural condition directly to Mexico. It was proposed that the committee be given authority to exempt such raisins from any or all of the requirements of the order.

It was indicated that the committee may desire to receive reports from wineries or livestock feeders of the tonnage of such raisins received or utilized. While such information may be desirable, it appears that currently only a very small quantity of those raisins would be disposed of for distillation or livestock feed, and thus obtaining such information may neither be practical nor necessary for effective administration of the order. Since it is possible that all raisins produced in southern California may need to be regulated in the future they should be included in the order now but the committee should be permitted to exempt, with approval of the Secretary, such raisins from any or all requirements of the order. In the notice of hearing, it was proposed that such authority be included in § 989.15 which defines handlers under the order. It is more appropriate that this exemption be included in § 989.60. This would be accomplished by designating the current provisions in § 989.60 as paragraph (a) thereof and adding a new paragraph (b) to provide that the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to exempt from any or all regulations those raisins produced in southern California (i.e., the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego) and disposed of for distillation, livestock feed, or by export in natural condition to Mexico.

In some instances, grapes from which only a small portion of the natural moisture has been removed may be delivered to wineries. Such grapes do not yet possess any of the external characteristics of raisins. To make it clear that such grapes should not be considered as raisins, § 989.5 should also provide that removal of a significant part of the natural moisture means removal which has progressed to the point where the grape skin develops wrinkles characteristic of fully formed raisins.

The evidence of record is that the largest acreage of grapes in southern California is planted to the Thompson Seedless variety, the same variety used in the San Joaquin Valley in the production of natural Thompson Seedless raisins. Thus, any such raisins produced in southern California and delivered to raisin packers should be inspected and certified in accordance with the minimum grade and condition standards established pursuant to the order for natural Thompson Seedless raisins. Another important grape variety grown in southern California is the Perlette variety. The evidence of record is that grapes of this variety, when dried, are very similar in terms of color, flavor, appearance, and processing characteristics to natural Thompson Seedless raisins. Therefore, any raisins produced from Perlette grapes in southern California and delivered to raisin packers should also be inspected and certified in accordance with the minimum grade and condition standards for natural Thompson Seedless raisins. Other grape varieties grown in southern California include Cardinal, Exotic, and Delight. To the extent that any of these varieties are dried into raisins and delivered to raisin packers, such raisins should, as necessary, be added to the list of varietal types set forth in

§ 989.10 and any necessary grade and condition standards prescribed therefor.

(2) Section 989.26 of the order establishes the membership of the Raisin Advisory Board. Currently, the Board consists of 35 producer, eight handler, two dehydrator, and one coooperative bargaining association(s) representatives. Section 989.26a provides for certain changes in handler representation on the Board; § 989.26b provides for certain changes in producer representation on the Board. However, the order does not provide for changes in dehydrator representation on the Board.

The quantity of artificially dehydrated raisins has remained fairly constant over the years, however, such raisins comprise only a very small part (about 6 percent) of overall raisin production. Since the beginning of the order, the number of dehydrators has decreased from about 30 to currently about 14. Because of this decrease, it was proposed that the order permit changes to be made in the number of dehydrator members on the Board, or to discontinue such representation. About half of the dehydrators currently operating also are raisin packers. In addition, all of the other dehydrators are also producers of grapes for dehydrating into raisins. Thus, dehydrators in either group—dehydrator/packers or producer/packers—would not be disenfranchised if dehydrator representation on the Board was reduced or discontinued. In order to carry out this proposal, a new § 989.26c should be added to the order providing that the Secretary, on recommendation of the Committee, may change the number of dehydrator members on the Board or may discontinue dehydrator representation on the Board. That section should also provide that in making any such change or discontinuing dehydrator representation, consideration shall be given to such factors as total number of dehydrators currently operating, the number of dehydrators operated by raisin packers, and the extent to which the interest of dehydrators is adequately served by other members on the Board.

Any reduction in dehydrator representation on the Board should not change the total number of Board members. The positions thus vacated should be allocated to producers or handlers, or both. However, it is not necessary that any specific provision be included in the order providing for such allocation. It appears from the evidence that the number of dehydrators will continue to decline so any change would probably mean a reduction in the number of dehydrator members on the Board. Changes in the industry could occur in the future after the number of dehydrator members have been reduced or the membership discontinued so that an increase or a reinstatement of such membership is desirable. This should be permitted. The evidence is that proposed § 989.26c would not be used to change the total number of Board members. Thus, any increase in dehydrator membership on the Board should not give that group any more members than they have now; i.e., two. Any increase should be drawn from the group (i.e., producers or handlers) to which the dehydrator member positions were previously allocated.

Discontinuing dehydrator representation on the Board would require a similar change in the representation on the Raisin Administrative Committee, since Committee members must be nominated from Board membership. Therefore, a new § 989.39c should be added to the order providing that the Secretary, on recommendation of the Committee, may change the number of dehydrator members on the Committee or may discontinue dehydrator representation on the Committee. That section should also provide that in making any such change or discontinuing dehydrator representation, consideration shall be given to such factors as total number of dehydrators currently operating, the number of dehydrators operated by raisin packers, and the extent to which the interest of dehydrators is adequately served by other members of the Committee.

In the event the dehydrator representation on the Committee is discontinued, the position should be allocated to producers or handlers in a manner consistent with the allocation on the Board. In the event the dehydrator member subsequently is restored, the position should be drawn from the group (i.e., producers or handlers) to which previously allocated.

(3) Paragraph (a) of § 989.54 should be revised to provide that on or before September 10 of each crop year, the Committee shall review shipment data, inventory data, and other matters relating to the quantity of raisins of any varietal type which should be made available as free tonnage for such varietal type during the crop year. Paragraph (a) should also provide that such quantity for any varietal type of raisin for which a free tonnage percentage may be designated should be referred to as the desirable free tonnage for such varietal type.

Paragraph (a) currently provides for the Committee to review shipment and other data on or before September 1 in connection with its determinations on desirable free tonnage. However, this date is too early in that data on shipments as of August 31 (the end of the crop year), and the carryout of raisins on that date, are not known. These data are essential to enable the Committee to make determinations on the desirable free tonnage. Extending the time for the Committee to review applicable data would afford it opportunity to obtain the requisite information on shipment and carryout data as of August 31.

Since the desirable free tonnage has been used, and should continue to be used, in conjunction with the Committee's recommendation, and the Secretary's designation of a free percentage for a varietal type of raisin, the desirable free tonnage should be recommended by the Committee to the Secretary only in conjunction with those varietal types for which a free tonnage percentage may be designated. In this regard, paragraph (a) should also provide that whenever the Secretary finds, from the recommendation and supporting information supplied by the Committee, or from other available information, that to designate a desirable free tonnage for any varietal type of raisin for a crop year would tend to effectuate the declared policy of the act, he shall designate such desirable free tonnage.

The last sentence in paragraph (a) of § 989.54 designating the desirable free tonnage for natural Thompson Seedless raisins to be 140,000 tons, until changed, should be deleted. That figure was included in 1967 to provide a base to begin operation of the order, as then amended. However, that figure has been revised for each of the crop years after 1967 and does not now reflect actual needs or practice. Moreover, any desirable free tonnage for a crop year should be designated by the Secretary hence, it is unnecessary for the order to refer to a specific desirable free tonnage for any varietal type.

Paragraph (b) of § 989.54 should be amended to provide that on or before October 5 of each crop year (except that this date may be extended by the Committee not more than 5 days if warranted by a late crop) the Committee shall submit to the Secretary an estimate of raisin production of any varietal type for which the Committee recommended a desirable free tonnage. That paragraph should also provide that if the Committee determines that a field price is firmly established on any varietal type of raisin for which it has recommended a desirable free tonnage, it shall recommend a preliminary free tonnage percentage to the Secretary which, when applied to the estimated production of that varietal type, would release 85 percent of the desirable free tonnage for such varietal type. Paragraph (b) should also provide that if the Committee determines that a field price is not firmly established, the Committee shall recommend a preliminary free tonnage percentage to the Secretary which would release 65 percent of the desirable free tonnage for such varietal type. A release of 85 percent of the desirable free tonnage is deemed to be the maximum tonnage which should be released and still protect against an error in the early season production estimate. A release of 65 percent of the desirable free tonnage is deemed to be a quantity of raisins which will provide adequate raisins for September–March shipments but not result in an excessive supply of such raisins early in the crop year when producers and handlers are negotiating a field price.

In conjunction with recommending preliminary percentages, the current order requires a Committee determination be made as to whether a specified percentage of open price contracts have been closed. This requirement is no longer appropriate because in recent years the use of such contracts between producer and handler has diminished.

Testimony was presented at the hearing to the effect that paragraph (b) of § 989.54 should not refer to establishment of field prices and closing of open

price contracts. It was contended that establishment of field prices is not the function of the Committee and forces a price decision on the independent handlers by artificially restricting their access to the supply of raisins. Moreover, it was contended that the proposal penalizes a handler who has established his price and has closed his open contracts by denying him access to raisins because other independent handlers had failed to agree with producers on prices. It was further contended that the proposed language is discriminatory in that it requires nothing of the cooperative segment of the industry other than voting their approval on the Committee of the fact that independent handlers had or had not established a price. In the alternative, it was recommended that percentages be set on the basis of supply and demand factors irrespective of the field price situation.

The 1967 recommended decision concluded that the desirable free tonnage designated for a crop year should be the tonnage of raisins which will actually be made available for free tonnage outlets for the entire crop year. Such tonnage would be released by the free percentage established when the crop estimate is known on or about October 5. In order to prevent excessive supplies of free tonnage from depressing field prices in the early part of a crop year, it was provided that a portion of the desirable free tonnage could be withheld from free tonnage markets until field prices were established. The findings and conclusion with respect to field prices in the 1967 recommended decision supported the need for withholding a portion of the desirable free tonnage until field prices are established. The reference to the establishment of field prices is supported by the record in this proceeding for the same reasons as prevailed in 1967, and it is hereby found that it should be retained in the order.

It is not the function of the order to establish field prices or to become involved with producers and handlers in their price negotiations. Nothing contained in these findings and conclusions authorize order involvement in such negotiations.

(4) Section 989.58(a) provides that no handler shall acquire or receive natural condition raisins which fail to meet the minimum grade and condition standards as set forth in § 989.97 (Exhibit B) or as later changed and then in effect. Raisins which do not meet the minimum grade and condition standards are off-grade raisins. Under the order, a handler may receive off-grade raisins for reconditioning, may receive or acquire off-grade raisins for use in eligible nonnormal outlets, or may return such raisins to the producer. Considerable expense is incurred by producers when handlers recondition their raisins. Raisins in a lot failing to meet the incoming maturity requirements can be removed from the lot by a handler during normal processing without appreciable additional expense. The evidence indicates that the order should authorize adoption of a system whereby handlers can receive lots of raisins containing immature raisins in excess of permitted levels without requiring such lots to be reconditioned to meet the minimum standards for maturity. Therefore, § 989.58(a) should be amended by inserting a new proviso to provide that a handler may acquire natural condition raisins which exceed a tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the Committee and approved by the Secretary.

The weight dockage system should provide a means for determining the quantity of immature raisins necessary to be removed from the lot in order for the balance (i.e., the creditable weight) of the lot to meet the applicable incoming standards for maturity. Such rules should prescribe the basis for application of volume and assessment requirements to such lots, and the extent to which such lots may be set aside by handlers as reserve raisins. For example, it was proposed at the hearing that handlers should be permitted to hold such lots (in their entirety) as reserve, but that they should be able to satisfy their reserve requirements only to the extent of the creditable weight in any such lot. Of course, any immature raisins removed by handlers in processing would be raisin residual material or other failing raisins and subject to the requirements of the order pertaining to such raisins.

(5) Section 989.59(a) should be amended by the addition of a proviso providing that a handler may grind raisins, which do not meet the minimum grade standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. Raisin paste is made by grinding raisins and then heating the ground mass. In recent years, the quantity of raisins ground into paste by raisin handlers has increased substantially. Mechanical damage means that the skin of raisins has been broken or torn during processing. Sugaring means formation of sugar crystals on the skin of the fruit or within the fruit itself. Since raisins lose their form and character as raisins in the grinding operation, and then are heated, the defects of mechanical damage and sugar are obliterated in the process and therefore raisins affected by mechanical damage or sugaring should be permitted to be used for raisin paste.

Because of compliance problems, grinding of mechanically damaged or sugared raisins should be limited to raisin handlers. The Committee would be able to supervise and keep their operations under surveillance and assure itself that such raisins would not be used in ineligible outlets. If the inspection service concludes that any lot of raisins is mechanically damaged to such a degree that it is impossible to inspect the raisins for other defects, such raisins should not be permitted to be ground into raisin paste.

(6) When the order was amended in 1967 (32 F.R. 12157), a definition of the term "other failing raisins" was included in § 989.59(f) to mean any raisins received or acquired by a handler either as standard raisins or off-grade raisins, which are processed to a point where they qualify as packed raisins but fail to meet the applicable minimum grade standards for packed raisins. The term was also included in the first sentence of paragraph (f) with respect to permitted dispositions of certain raisins not meeting applicable minimum standards. However, the term was not included in the third and fourth sentences of that paragraph, which pertain to the establishment of rules and procedures to insure adequate control over raisins failing to meet such standards, and authority to confine the disposition and use of such raisins to the area. Section 989.15(c) defines "handler" to mean, among other things, any person who delivers off-grade raisins or raisin residual material to other than a packer or other than into any eligible nonnormal outlet. Omission of the term "other failing raisins" from these provisions has created doubt and confusion as to the applicability of those provisions to such raisins. To remove any such doubt and confusion, the term "other failing raisins" should be included in § 989.15(c) and the third and fourth sentences in § 989.59(f).

(7) Paragraph (g) of § 989.59 should be amended to provide that the Committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade standards of that section, together with the inspection and certification requirements, if applicable. Paragraph (g) currently authorizes the establishment of rules and procedures for the exemption of raisins in gift and specialty packs from all grade inspection and certification requirements applicable to the shipment or final disposition of raisins. The evidence is that gift packs usually contain raisins of high quality. Although the paragraph has afforded handlers the opportunity to request exemption of gift packs for a number of years, no such requests have been received by the Committee. In absence of any need or interest for exemption of raisins in gift packs from grade, inspection, and certification requirements, "gift packs" should be deleted from paragraph (g).

However, the term "experimental packs" should be included in paragraph (g) in order to enable the Committee to distinguish between experimental and specialty packs. Experiments with various packs of raisins may include, but not necessarily limited to, determinations on feasibility of pack, consumer acceptance, storage characteristics, and shelf life. With reference to "specialty packs," testimony presented at the hearing included both "specialty processing" and "specialty packs." The term "specialty processing" was defined to mean use of oil dressing or other techniques in processing, including the addition of moisture to increase the moisture level of the packed item, whereas specialty packs means unusual types of containers.

For the purposes of prescribing any exemption pursuant to paragraph (g), the term "specialty packs" should mean packs involving specialty processing including the addition of ingredients, as well as unusual types of containers.

Because it may be desirable in some instances to apply some grade requirements to such packs, the provisions of paragraph (g) should permit exemption from one or more of the grade requirements. For example, such authority could be invoked to exempt raisins in experimental or gift packs from those requirements which would interfere with or prevent experimentation or marketing. However, exemptions granted pursuant to paragraph (g) should not be unlimited. The evidence is that when an experimental or specialty pack becomes an accepted trade item either in volume or regularity of shipment, the exemption should be withdrawn by the Committee so that the raisins in such pack meet all of the grade requirements of the order, as well as inspection and certification.

(8) Paragraphs (a), (b), and (c) of § 989.66 should be amended so that the requirements of those paragraphs with respect to reserve tonnage acquired by handlers also apply to reserve raisins removed by the Committee from a handler's premises and transferred to another handler. Paragraph (f) should be amended to include the term "fumigating" in the list of activities currently set forth in paragraph (f) which handlers perform with respect to reserve tonnage raisins as determined by the final reserve percentage of a crop year and held by them for the account of the Committee. Paragraph (f) should be amended further by: Changing the date prescribed therein from July 15 to June 1 after which any handler may request the Committee to remove reserve raisins of the then current crop year which remain in his possession; providing authority for a handler to request after June 1 the Committee to relocate reserve raisins of the then current crop year in his possession; providing for such relocation by the Committee by September 15 of the subsequent crop year, subject to certain qualifications; and, in certain instances, providing for handlers to reimburse the Committee for costs incurred by it in removing or relocating reserve raisins.

Section 989.66 currently requires a handler to hold in storage all reserve raisins acquired by him until relieved of such responsibility by the Committee. In a number of instances, the Committee removed reserve raisins from a handler's premises and transferred such tonnage to another handler for storage or eventual sale to the transferee handler. In a few of these cases, the transferee handler packed and shipped the reserve raisins without being relieved by the Committee of the responsibility to hold such tonnage. It is not clear that the provisions of § 989.66 requiring handlers to hold reserve raisins also apply to transferred reserve tonnage. Therefore, it was proposed in the notice of hearing that paragraph (c) of § 989.66 be amended to require each handler to hold in his possession or under his control reserve tonnage that is transferred to him until released by the Committee. At the hearing, proponents proposed that a sentence be added to paragraph (a) of § 989.66, instead of paragraph (c), requiring reserve tonnage raisins transferred to a handler by the Committee to be held by him for the account of the Committee and subject to the same restrictions applicable to reserve raisins acquired, with the understanding that all requirements of § 989.66 would thereby apply to transferred reserve tonnage. However, paragraphs (b) and (c) also pertain to the holding and storage of reserve raisins, and should specifically provide for such transferred reserve tonnage. So as to remove any doubt as to the applicability of the provisions of § 989.66 to reserve tonnage transferred by the Committee from one handler to another, paragraph (a), the first sentences in subparagraphs (1) and (2) of paragraph (b), and paragraph (c), of § 989.66 should be amended to specifically include reference to such transferred reserve tonnage.

Paragraph (f) of § 989.66 provides, in part, that handlers shall be compensated for receiving, storing, handling, and inspection of that tonnage of reserve raisins determined by the final reserve percentage of a crop year held by them for the account of the Committee, in accordance with a schedule of payments established by the Committee and approved by the Secretary. The industry regards the fumigation of raisins as part of the storage function and deemed to be included within the services for which handlers have been compensated. However, since "fumigating" is not specifically included in the services enumerated in paragraph (f), some doubt has been expressed as to whether the Committee would be required to compensate handlers for fumigating raisins in addition to compensating them for the other services set forth in paragraph (f). So as to remove any such doubt, the word "fumigating" should be included in the first sentence of paragraph (f) of § 989.66.

Paragraph (f) also authorizes handlers to request the Committee at any time after July 15 of a crop year to remove reserve tonnage raisins of the current crop year which remain in his possession. One purpose of this provision is to free handlers' and growers' containers for use in delivering and storing raisins of the oncoming crop. The Committee has purchased about 70,000 of these containers to store reserve tonnage raisins. In order to afford the Committee additional time to remove reserve tonnage and utilize available labor when packer activities are minimal, the July 15 date should be changed to June 1. Moreover, the June 1 date would afford handler more time and greater flexibility in determining their container needs and labor requirements in assisting the Committee in any removal.

In many instances, handlers only want the Committee to remove raisins from their and growers' containers, and are willing to continue to store such tonnage on their premises in the Committee containers. The industry commonly refers to this as "relocation" to differentiate it from physical removal of reserve tonnage from a handler's premises and transferral to another location. However, paragraph (f) does not specifically provide for a handler to request the Committee to relocate reserve tonnage. It is in the interest of both producers and handlers from the standpoint of cost and quality that reserve raisins be stored with those handlers who will eventually process them. Accordingly, paragraph (f) should authorize handlers to request the Committee to relocate reserve tonnage, and the June 1 date applicable to requests for removal should also be applicable to requests for relocation. Furthermore, the September 15 date prescribed in paragraph (f) with respect to the removal of reserve raisins from handlers' premises by the Committee should, subject to the qualifications currently set forth in paragraph (f) for such removal, also apply to the relocation of reserve raisins. September 15 is the date selected by the industry as the latest date by which growers' and handlers' containers must be made available for use in receiving and storing new crop raisins.

Since reserve raisins are held for the account of equity holders, the expense of relocation should be borne by the equity holders in the applicable reserve pool. Such expenses may be considerable. The record of evidence is that any handler requesting the Committee to relocate raisins and subsequently seeking release of such raisins to him by the Committee by September 15 of the subsequent crop year has caused the Committee to incur a needless expense on behalf of equity holders, and therefore should reimburse the Committee for such relocation expense. Consistent with this recommendation and as a conforming change, this requirement should also be applicable to raisins removed from a handler's premises pursuant to his request and released to him by September 15. Therefore, paragraph (f) should also provide that if the Committee removes or relocates reserve raisins pursuant to a handler's request, and such raisins are released to him by September 15, the handler shall reimburse the Committee for any costs incurred by it in such removal or relocation.

(9) The proviso in § 989.67(a) should be amended to provide that whenever the Secretary finds, based upon a recommendation of the Committee, or on the basis of information otherwise available to him that because of national emergency, crop failure, an insufficient supply of reserve tonnage for export, or other major change in economic conditions, retention of reserve tonnage raisins carried over is warranted, the requirements as to disposal shall not apply and such raisins may be disposed of in any outlet recommended by the Committee and approved by the Secretary.

Paragraph (a) of § 989.67 currently requires the Committee to dispose of all reserve tonnage raisins of a crop year, as nearly as practical, by November 1 of the subsequent crop year. Furthermore, any reserve tonnage held unsold by the Committee on November 1 must be

physically disposed of promptly in any available nonnormal outlet. However, paragraph (a) provides that whenever the Secretary approves of a finding by the Committee or finds, on the basis of information otherwise available to him that because of national emergency, crop failure, or other major change in economic conditions, retention of the carryover reserve tonnage is warranted, the requirements of paragraph (a) shall not apply and such carried-over raisins may be disposed of in any outlet recommended by the Committee and approved by the Secretary.

The evidence of record is that the expected demand for reserve raisins during a crop year could exceed the estimated supply of such raisins for such year. This could result from a shortage in the production of raisins during the year rather than an actual crop failure. A shortage in production would be known before November 1 and would warrant retention of the carryover raisins.

Currently, the Secretary must approve of a Committee finding or find that retention of reserve tonnage carried over is warranted. It was proposed at the hearing that the finding to waive the November 1 disposal requirement would more appropriately be made by the Secretary based on a recommendation of the Committee, or on the basis of information otherwise available to the Secretary. Since the final decision is thus clearly vested with the Secretary, this proposal is adopted.

Paragraph (c) of § 989.67 should be amended to provide that the Committee shall sell reserve raisins to handlers for export sale to countries on a list established by the Secretary, on the basis of the recommendation of the Committee or from other available information. Moreover, paragraph (c) should provide that the list of countries shall be reviewed by the Committee annually when it reviews matters relating to desirable free tonnage, and shall recommend any changes in the list to the Secretary for approval.

Paragraph (c) of § 989.67 currently requires the Committee to submit annually to the Secretary a list of countries to which handlers may make sales of reserve raisins in export for establishment by rule making. In the last 10 years this list has been changed only once. The recommended amendment would eliminate unnecessary rule making currently required by paragraph (c). The list of countries currently in effect in § 989.221 (7 CFR 989.221; 36 F.R. 20151) should continue in effect until it needs to be reestablished by the Secretary.

For purposes of clarification, the fourth sentence currently contained in paragraph (c) of § 989.67 should be revised to read that no country may be removed from the list for the purpose of permitting direct sale by the Committee unless a finding is made by the Committee and approved by the Secretary, that such removal and subsequent direct sale by the Committee shall not lead to disruption of sale of reserve tonnage raisins by handlers in other countries on the list, and that although handlers have been able to offer reserve tonnage raisins at competitive prices to the country to be so removed, there remains an unfilled demand in such country which has not been supplied by handlers and which could be supplied by the Committee at the same prices by means of direct sale. Thus, the Committee would make sales of reserve tonnage to any country so removed from the list and handlers could sell only free tonnage to such country after such removal. However, any subsequent recommendation to re-add such country to the list must be reevaluated in the light of the Committee's recommendation and finding for its removal from the list.

The last sentence of § 989.67(c) requires that no country may be added to the list unless finding is made by the Committee that such addition represents a practical means of making sales of reserve raisins to such country. Since the list is established by the Secretary on the basis of the recommendation of the Committee or from other available information, and in view of the foregoing recommendations, this provision no longer is necessary and should be deleted.

Section 989.67(d)(1) should be amended to allow the Committee the option of paying or not paying the cost of transporting reserve raisins from one handler to another. If a packer has more than one plant, the Committee may pay the cost of transporting reserve tonnage to the plant of its choice.

The order currently requires the Committee to pay the costs of transporting reserve pool raisins sold under special offers, but does not permit the Committee to pay such costs for raisins sold under regular reserve offers. The tonnage for special offers consist primarily of the accumulation of unsold tonnage from reserve tonnage raisins previously offered. Since 1967, the order has provided for special offers and such offers have been made only after all of the reserve tonnage from a crop year has been once offered through regular offers. The evidence of record indicates that provisions for special offers, in § 989.67(d)(3) should be deleted from the order and in lieu thereof provisions should be included whereby the Committee may have the option of making or not making reoffers of unsold reserve tonnage from each regular offer. This would permit the Committee to tailor each reserve offer to the then existing market conditions. The evidence of record indicates that payment of transportation costs by the Committee for both regular offers and reoffers of reserve tonnage should be optional. If a handler's entire reserve holding has been sold and released to him, and he is allocated additional tonnage pursuant to an offer, it is necessary to transport reserve raisins to him from a handler who holds excess reserve raisins. Also, some handlers are not active in the export market and do not sell their allocations. Such handlers have little or no need for reserve tonnage. Other handlers are active in the export market and can sell more than their holdings, hence to maximize sales of reserve tonnage, the Committee should be in a position to transport such raisins from one handler to another. At times, it may be beneficial for the Committee to pay such transportation costs if it will facilitate raisin sales. At other times, payment of such costs may not be necessary. Therefore, the Committee should have the option of paying or not paying for transportation costs.

If a handler has more than one processing facility, the Committee should have the choice as to which location reserve raisins would be transported at Committee expense, so that the raisins may be transported at the least possible cost. The handler may request reserve raisins be transported to any location; however, he should pay any additional cost of transportation over and above the cost incurred in transporting such tonnage to the plant of such handler selected by the Committee. In the notice of hearing, it was proposed that provisions regarding Committee options on payment of costs for transporting reserve raisins and on selection of a handler's plant to which such raisins will be transported at Committee expense should included as an amendment of subparagraph (2) of § 989.67(d). However, it is more appropriate that these provisions be included in subparagraph (1) of § 989.67(d) because this subparagraph deals with the basic terms of offers of reserve tonnage raisins by the Committee.

Subparagraph (1) of § 989.67(d) should be further amended to authorize the Committee to make additional reserve tonnage available to packers to fill containers used in containerized shipments.

More and more reserve pool export shipments are being made in containerized shipments. These containers are filled with packed raisins at the handler's plant and are not opened until they reach the foreign buyer. In some instances, a handler's reserve tonnage allocation in an offer or reoffer may not be enough to enable the handler to fill all the containers in an export shipment. Thus, in order to facilitate raisin movement, avoid loss of sales, and permit handlers to make the most advantageous shipping arrangements, the Committee should be authorized to make raisins available in each offer or reoffer to handlers so they may ship full containers in export.

In each offer or reoffer, the Committee should be authorized to sell up to 2 percent of the total tonnage offered to handlers whose regular allocations provide insufficient tonnage to fill a containerized freight container. Such sale may be made only when the remaining portion of a handler's regular allocation will fill at least 50 percent of such container and shall be made to a handler only one time in each offer or reoffer of reserve tonnage. It was concluded that a handler must have enough tonnage to fill at least

50 percent of a containerized freight shipping container before the Committee would sell raisins to the handler to completely fill the container. This is to recognize the basic intent of the order with regard to handler allocations of reserve tonnage and avoid the possibility of causing undue distortions in the allocation system if no limitation were placed on the size or frequency of what is intended as a minor adjustment in the reserve tonnage offer system. In the notice of hearing it was proposed that the authority be included as a new subparagraph (5) to § 989.67(d). However, it is more appropriate that this be included in subparagraph (1) of § 989.67(d) which pertains to terms of reserve tonnage offers by the Committee.

Subparagraph (2) of § 989.67(d) should be amended to delete provisions regarding open-as-to-tonnage offers of reserve tonnage raisins and to reduce a handler's allocation of reserve pool raisins if any reserve raisins have been removed by the Committee from a handler's premises upon his request pursuant to § 989.66(f).

The order currently provides in § 989.67(d)(2) that the committee may make open-as-to-tonnage reserve offers. This provision has never been used. It would allow a handler to sell his entire reserve pool holding pursuant to the pricing and shipping provisions included in such an offer by the committee. This is contrary to the industry philosophy of recent years of selling reserve tonnage by making offers of specified amounts of tonnage for relatively short periods of time with short shipping periods. Therefore, § 989.67(d)(2) should be revised to eliminate open-as-to-tonnage offers.

With respect to handler shares of reserve tonnage, subparagraph (2) of § 989.67(d) should be further amended to provide for reduction of a handler's share of subsequent offers after he has requested and obtained removal of reserve raisins of the current crop year from his possession.

As discussed in material issue (8), paragraph (f) of § 989.66 permits a handler to request the committee to remove raisins of the current crop year which remain in his possession. In past years, handlers have requested such removal not only because of need for space or containers, but also because they did not anticipate a need for all of the reserve raisins in their possession to fulfill their sales needs from subsequent reserve offers. Some handlers do not sell their proportionate shares of reserve tonnage, hence, removal of excess quantities is requested. Under present order provisions, a handler continues receiving his full allocation of reserve offers, in proportion to his acquisitions, even though the committee has removed raisins from his premises, as requested. The evidence of record indicates that a handler's share in offers from a reserve pool made subsequent to such removal should be reduced in proportion to that amount of reserve tonnage which the committee has removed from the handler's premises and allocated to all other handlers. The reduction of a handler's share should be according to the percentage that the removed tonnage is of his total reserve acquisitions in the particular pool and such share should be allocated to other handlers under the then current offer. However, this should not apply to reserve tonnage carried over beyond October 31 of the succeeding crop year because handlers' shares of any reserve offer after that date are computed on a new basis. Section 989.67(d)(2) currently provides that subsequent to October 31, each handler's share of any offer of reserve tonnage shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by the handler during the then current crop year (i.e., such succeeding crop year) is of the total free tonnage raisins acquired by all handlers during the then current crop year. The evidence of record is that this provision should remain unchanged.

Subparagraph (3) of § 989.67(d) should be amended to provide that with respect to any offer of reserve tonnage for sale to handlers for resale in export, the committee may provide that any tonnage unpurchased at the end of the share reservation period will be reoffered to handlers without regard to shares and that approval for handlers' applications for purchase may be made in the same order in which the applications are received by the committee. The current provisions of subparagraph (3) regarding special offers of reserve tonnage should be deleted.

The present order authorizes the committee to make reoffers of unpurchased reserve tonnage from special offers, but reoffers may not be made after regular offers. With respect to reserve tonnage, it has always been a basic provision of the order to give each handler first opportunity to sell the reserve tonnage he holds as a result of his free tonnage acquisitions. Thus, each handler always has had an initial allocation in each regular offer. However, some handlers could sell raisins in excess of their regular allocations if a supply of reserve raisins is available to him and under certain circumstances these handlers should be allocated additional raisins. This can be accomplished by means of making reoffers of the unpurchased raisins from regular offers. Each handler will continue to have his initial allocation of each offer; however, the reoffer mechanism would permit the committee to make additional raisins available on a timely basis to those able to purchase and sell them.

Inclusion of a reoffer to follow a regular offer should be optional with the committee. A reoffer may not always be warranted. For example, if all handlers' purchases of tonnage from a regular offer are sluggish and the tonnage is not all taken, a reoffer probably would not be warranted. The committee should have discretion in timing of a reoffer. At the time an offer is made it may not then be evident whether a reoffer should follow. Consequently, the committee should be permitted to include a reoffer at the time the offer is made, during the period the offer is open, or soon after the offer has expired.

The evidence of record shows that a reoffer should stipulate that it is made to handlers without regard to shares and that approval of handlers' applications for purchase will be made in the order in which they are received; i.e., on a first-come-first-serve basis. This is the method now used for reoffers under special offers and it is favored by the industry. At times since the inception of the raisin order, other types of reoffer procedures have been satisfactorily used. It was testified that since the workability of a new procedure is difficult to foresee, authority should be available in the order for changing the method of making reoffers by means of rule making, without the necessity of amending the order. Rule making is not necessary because no offer or reoffer of reserve tonnage raisins can be made by the committee until 5 days has elapsed from the time the committee files with the Secretary complete information as to varietal type, quantity, and price involved in such offer, and the Secretary may disapprove the offer or any term thereof. Hence, any needed changes in reoffer techniques which may be needed would be included in the terms of the reoffer and can be handled administratively.

Tonnage purchased by a handler in a reoffer would not affect his share, nor those of other handlers, in subsequent regular offers. This adheres to the basic intent that a handler shall be given his share of each regular offer. Tonnage not purchased in a reoffer would remain in the reserve pool for later offers. Likewise, if an offer is not followed by a reoffer, tonnage not purchased in such offer would remain in the pool.

In the notice of hearing, the provisions for reoffers of reserve tonnage were included as a proposed amendment of subparagraph (2) of § 989.67(d). It is more appropriate that such provisions be placed in subparagraph (3) of § 989.67(d), because currently this subparagraph deals with special offers of reserve tonnage, hence, the new provisions on reoffers should be in this subparagraph.

In the notice of hearing it was proposed that the Committee should be permitted to sell reserve raisins to handlers at a differential price during reoffers of tonnage unsold from a regular offer. When a handler has sales for reserve raisins in excess of his allocation under a regular offer, he cannot obtain additional raisins from the Committee. Such packer may obtain additional reserve raisins by buying from other handlers who have not sold their full allocation. Such buying is usually at a premium price. This proposal was included in the notice of hearing as a proposed amendment of subparagraph (4) of § 989.67(d). At the hearing the proponents recommended that this be included in subparagraph (3) of § 989.67(d). This proposal could result in discriminatory pricing because the Committee could be offering the same reserve raisins during a reoffer period to some handlers at one price and to other handlers at a different price. Therefore this proposal is

denied. The proponents testified that this proposal was intended to enable the aggressive selling handler to obtain additional reserve raisins. This same purpose could be achieved by making a new offer, thus all handlers would have a new allocation. Furthermore, since it is proposed that reoffers of reserve tonnage may be made without regard to handler shares, the Committee should have the means to supply all handlers with their needs for reserve tonnage.

As a conforming change, subparagraph (4) of § 989.67(d) should be revised to provide that the final offer of the reserve tonnage from a crop year may be offered by the Committee to handlers for export sale without regard to shares and approval of handlers' applications for purchase may be made in the same order in which the applications are received by the Committee. The revised language will bring this subparagraph into conformity with other amended provisions regarding reserve tonnage offers.

Section 989.67(j) should be amended to include provisions whereby the Committee may sell reserve tonnage raisins of any varietal type to handlers to provide them with raisins to sell as free tonnage if shipments of free tonnage raisins during the first 10 months of a crop year exceed such shipments during the corresponding period of the previous crop year by more than 5 percent; and whereby the Committee may make such sales to a handler to replace that free tonnage lost through fire or other disaster beyond a handler's control.

During the past 4 years, market conditions for free tonnage raisins have been relatively stable. Hence, the desirable free tonnage designated for each of those years has been such that any sharp increase in free tonnage demand could outrun the available supply. The industry is looking toward expanded promotional activity through a State marketing order which, if fully implemented, would greatly increase the amount of advertising on raisins. This activity could substantially increase the disposition of natural Thompson Seedless raisins into free tonnage outlets. It is difficult to estimate the degree to which the domestic market might be expanded in any one year. The industry does not want to overestimate the demand for free tonnage in the fall and as a result set a desirable free tonnage that is too high. This could depress the market. The order should provide the means by which reserve raisins could be sold to handlers for free tonnage use after a major part of the crop year has transpired, if free tonnage disposition has increased substantially over the prior-year's disposition. The evidence of record indicates that shipments for 10 months of the then current crop year would have to exceed those of the comparable period of the previous year by 5 percent, and that the quantity of reserve tonnage which would be sold to handlers for use in free tonnage outlets would be only the excess above such 5 percent. This would be a safeguard against expanding the free supply by too large a quantity, thereby depressing prices. The quantity of reserve raisins released may consist of all or part of the excess above the 5 percent and that there should be only one such release.

In recent years a handler's free tonnage inventory was destroyed by fire. At that time the free tonnage supply in the industry was such that the packer was unable to obtain raisins from other packers in order to supply his customers. In order to assure that markets do not go unfilled because of this type of occurrence, § 989.67(j) should be amended to provide that the Committee may sell reserve raisins to a handler who has lost free tonnage raisins because of fire, or other disaster beyond his control, in an amount equal to his loss of free tonnage.

When a sale of reserve tonnage to handlers is made under this paragraph the sale price shall not be below that which the Committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by packers during the current crop year up to the time of the sale, to which shall be added the costs incurred by the Committee on account of receiving, inspecting, fumigating, storing, insuring, and holding of said raisins and should include taxes and interest. These cost items are intended to compensate the Committee and should result in a price reflective of the value of free tonnage raisins at the time of such sale.

(10) The second sentence of § 989.82 should be amended to authorize the Committee to pay any taxes assessed against raisins held by or for the account of the Committee on March 1, or such date as later changed and in effect, in the reserve pool. That sentence should continue to provide that any equity holder may pay his own taxes upon giving notice to the Committee on or before May 1 of each year of his intention to do so. The order currently authorizes the Committee to pay such taxes as are assessed against such raisins on the first Monday in March. This date should be changed to conform with the current California law or any subsequent change with respect to the assessment date.

(11) Some of the amendatory actions herein cause the need to make certain conforming changes, as hereinafter set forth, in the provisions of the order, so that the order, as amended, will be in conformity with those actions. Such changes are discussed herein with the issues to which pertinent. All such changes should be incorporated herein.

Rulings on proposed findings and conclusions. The Presiding Officer announced at the hearing that interested persons would be allowed 10 days after receipt of the hearing record in the Hearing Clerk's office for filing proposed findings and conclusions, and written arguments or briefs, based on evidence received at the hearing. A brief was filed by Sun-Maid Raisin Growers, Kingsburg, CA, urging favorable consideration of all proposed amendments.

This brief has been considered carefully in light of the scope of the notice and the evidence in the record, in making the findings and reaching the conclusions herein set forth. To the extent that any suggested findings and conclusions contained in the aforesaid brief are inconsistent with the findings and conclusions contained herein, they are denied on the basis of the facts found and stated in connection with the recommended decision.

General findings. (a) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except the finding as to the base period for the parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed. (For prior findings and determinations see 14 F.R. 5136; 20 F.R. 6435; 21 F.R. 8182; 25 F.R. 12814; 29 F.R. 9482; 32 F.R. 12157.)

(b) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(c) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of raisins produced from grapes grown in California, in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in the marketing agreement and order upon which hearings have been held;

(d) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(e) There are no differences in the production and marketing of raisins in the production area covered by the marketing agreement and order, as amended, and as hereby proposed to be further amended, which require different terms applicable to different parts of such area;

(f) All handling of raisins produced from grapes grown in California is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

Recommended amendment of the order. The following amendment of the order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Revise § 989.5 to read:

§ 989.5 Raisins.

"Raisins" means grapes of any variety grown in the area, from which a significant part of the natural moisture has

been removed by sundrying or artificial dehydration, either prior to or after such grapes have been removed from the vines. Removal of a significant part of the natural moisture means removal which has progressed to the point where the grape skin develops wrinkles characteristic of wrinkles in fully formed raisins.

2. Revise § 989.15 to read:

§ 989.15 Handler.

"Handler" means: (a) Any processor or packer; (b) any person who places, ships, or continues natural condition raisins in the current of commerce from within the area to any point outside thereof; (c) any person who delivers off-grade raisins, other failing raisins or raisin residual material to other than a packer or other than into any eligible nonnormal outlet; or (d) any person who blends raisins: *Provided,* That blending shall not cause a person not otherwise a handler to be a handler on account of such blending if he is either: (1) A producer who, in his capacity as a producer, blends raisins entirely of his own production in the course of his usual and customary practices of preparing raisins for delivery to processors, packers, or dehydrators; (2) a person who blends raisins after they have been placed in trade channels by a packer with other such raisins in trade channels; or (3) a dehydrator who, in his capacity as a dehydrator, blends raisins entirely of his own manufacture.

3. Add a new § 989.26c to read:

§ 989.26c Changes in dehydrator representation.

The Secretary, on recommendation of the committee, may change the number of dehydrator members on the board or may discontinue dehydrator representation on the board. In making any such change or discontinuing dehydrator representation, consideration shall be given to such factors as total number of dehydrators currently operating, the number of dehydrators operated by raisin packers, and the extent to which the interest of dehydrators is adequately served by other members on the board.

4. Add a new § 989.39c to read:

§ 989.39c Changes in dehydrator representation.

The Secretary, on recommendation of the committee, may change the number of dehydrator members on the committee or may discontinue dehydrator representation on the committee. In making any such change or discontinuing dehydrator representation, consideration shall be given to such factors as total number of dehydrators currently operating, the number of dehydrators operated by raisin packers, and the extent to which the interest of dehydrators is adequately served by other members on the committee.

5. Revise paragraph (a) and that part of paragraph (b) which precedes subparagraph (1) thereof, of § 989.54 to read:

§ 989.54 Marketing policy.

(a) *Desirable free tonnage.* On or before September 10 of each crop year, the committee shall review shipment data, inventory data, and other matters relating to the quantity of raisins of any varietal type which should be made available as free tonnage for such varietal type during the crop year. Such quantity for any varietal type of raisin for which a free tonnage percentage may be designated shall be referred to as the desirable free tonnage for such varietal type and shall be recommended by the committee to the Secretary. Whenever the Secretary finds, from the recommendation and supporting information supplied by the committee, or from other available information, that to designate a desirable free tonnage for any varietal type of raisin for a crop year would tend to effectuate the declared policy of the act, he shall designate such desirable free tonnage.

(b) *Free and reserve percentages.* On or before October 5 of each crop year (except that this date may be extended by the committee not more than 5 days if warranted by a late crop) the committee shall submit to the Secretary an estimate of raisin production of any varietal type for which the committee recommended a desirable free tonnage. If the committee determines that a field price is firmly established on any varietal type of raisin for which it has recommended a desirable free tonnage, it shall recommend a preliminary free tonnage percentage to the Secretary which, when applied to the estimated production of that varietal type, would release 85 percent of the desirable free tonnage for such varietal type. If the committee determines that a field price is not firmly established, it shall recommend a preliminary free tonnage percentage to the Secretary which would release 65 percent of the desirable free tonnage for such varietal type. No later than February 15, the committee shall recommend to the Secretary a free tonnage percentage which will tend to release the full desirable free tonnage designated for any varietal type. Prior to February 15, interim changes of percentages may be recommended by the committee to the Secretary to release less than the full desirable free tonnage designated for any varietal type. The difference between any free tonnage percentage designated and 100 percent shall be the reserve tonnage percentage. In developing its free and reserve percentages for any varietal type, the committee shall consider and report to the Secretary on the following factors:

* * * * *

6. Revise § 989.58(a) to read:

§ 989.58 Natural condition raisins.

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet the minimum grade and condition standards as set forth in § 989.97 (Exhibit B) or as later changed and then in effect: *Provided,* That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning, and may receive or acquire off-grade raisins for use in eligible nonnormal outlets: *And provided further,* That a handler may acquire natural condition raisins which exceed a tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade and condition standards are not applicable or then in effect pursuant to this part.

* * * * *

7. Revise § 989.59 by adding a proviso at the end of paragraph (a); revise the third and fourth sentences of paragraph (f) to include "other failing raisins" and revise paragraph (g):

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* * * *

And provided further, That a handler may grind raisins, which do not meet the minimum grade standards for packed raisins because of mechanical damage or sugaring, into a raisin paste.

* * * * *

(f) * * * The committee shall establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure adequate control over the off-grade raisins, other failing raisins, and raisin residual material subject to this paragraph. Such rules may include a requirement that the disposition and use of all or any class of off-grade raisins, other failing raisins, or raisin residual material be confined to the area. * * *

(g) *Exemption of experimental and speciality packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade standards of this section, together with the inspection and certification requirements if applicable.

8. Revise § 989.60 by designating the current provisions thereof as paragraph (a) and adding a new paragraph (b) to read:

§ 989.60 Exemption.

* * * * *

(b) The committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to exempt from any or all regulations raisins produced in southern California (i.e., the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego) and disposed of for distillation, livestock feed, or by export in natural condition to Mexico.

9. Revise paragraphs (a), (c), and (f) and subparagraphs (1) and (2) of paragraph (b) of § 989.66:

§ 989.66 Reserve tonnage generally.

(a) The standard raisins acquired by a handler which are designated as reserve tonnage and reserve tonnage transferred to a handler by the committee shall be held by him for the account of the committee and subject to the applicable restrictions of this part.

(b) (1) Each handler shall hold in storage all reserve tonnage acquired by him and all reserve tonnage transferred to him by the Committee until he has been relieved of such responsibility by the Committee either by delivery to the Committee or otherwise. Such handler shall store such reserve tonnage raisins in natural condition without addition of moisture and in such manner as will maintain the raisins in the same condition as when he acquired them, except for normal and natural deterioriation and shinkage, and except for loss through fire, acts of God or other conditions beyond the handler's control: *Provided,* That in the case of Layer Muscat raisins, the Committee may permit handlers to satisfy the applicable reserve tonnage obligations with residual Muscat raisins obtained by them in layering operations subject to such safeguards as it may prescribe.

(2) Reserve tonnage acquired by a handler or transferred to a handler by the Committee shall be stored separate and apart from other raisins to such extent and identified in such manner as the Committee shall specify in its rules and procedures with the approval of the Secretary.

* * * * *

(c) Each handler shall, at all times, hold in his possession or under his control reserve tonnage referable to his acquisitions of standard raisins and reserve tonnage transferred to him by the Committee, less any quantity of such reserve tonnage released to him by a change of percentages, delivered by him pusuant to instructions of the Committee, or sold to him by the Committee.

* * * * *

(f) Handlers shall be compensated for receiving, storing, fumigating, handling, and inspection of that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the Committe, in accordance with a schedule of payments established by the Committee and approved by the Secretary. A box rental shall be paid by the Committee to producers or handlers for boxes used in storing reserve tonnage raisins beyond the crop year of acquisition in accordance with a rental schedule established by the Committee and approved by the Secretary. The handler compensation shall be reviewed annually and shall be paid, as to the amount determined to be earned and unpaid, as soon as practicable after the end of the second quarter of the crop year and quarterly thereafter. Any handler may request the Committee, by registered or certified mail, at any time after June 1 of a crop year to remove or relocate reserve tonnage raisins of the current crop year which remain in his possession. At any time during a crop year, a handler may request removal or relocation of reserve tonnage of a prior crop year. In each instance, he may request that the Committee provide the necessary containers for any such removal or relocation. When so requested as to current crop year raisins, the Committee shall make the removal or relocation, the availability of containers, storage space and time of request permitting, by September 15 of the subsequent crop year, and as to raisins of the prior crop year, within 30 days, supplying the necessary containers if so requested. If the Committee removes or relocates reserve raisins of the current crop year pursuant to a handler's request, and such raisins are released to him by September 15 of the subsequent crop year, the handler shall reimburse the Committee for any costs incurred by it in such removal or relocation. If any handler requests removal or relocation of reserve raisins, the Committee shall immediately give notice thereof to the Secretary.

* * * * *

10. In § 989.67, revise: The proviso in paragraph (a); paragraph (c); subparagraphs (1), (2), (3), and (4) of paragraph (d); and paragraph (j).

§ 989.67 Disposal of reserve raisins.

(a) * * *: *Provided,* That whenever the Secretary finds, based upon a recommendation of the Committee, or on the basis of information otherwise available to him that because of national emergency, crop failure, an insufficient supply of reserve tonnage for export, or other major change in economic conditions, retention of reserve tonnage raisins carried over is warranted, the foregoing requirements as to disposal shall not apply and such raisins may be disposed of in any outlet recommended by the Committee and approved by the Secretary.

* * * * *

(c) The Committee shall sell reserve raisins to handlers for export sale to countries on a list established by the Secretary, on the basis of the recommendation of the Committee or from other available information. The list of countries shall be reviewed by the Committee annually when it reviews matters relating to the desirable free tonnage, and shall recommend any changes in the list to the Secretary for approval. No country may be removed from the list for the purpose of permitting direct sale by the Committee unless a finding is made by the Committee and approved by the Secretary, that such removal and subsequent direct sale by the Committee shall not lead to disruption of sale of reserve tonnage raisins by handlers in other countries on the list, and that although handlers have been able to offer reserve tonnage raisins as competitive prices to the country to be so removed, there remains an unfilled demand in such country which has not been supplied by handlers and which could be supplied by the Committee at the same prices by means of direct sale.

(d) (1) Reserve tonnage raisins shall be sold to handlers at prices and in a manner intended to maximize producer returns and achieve complete disposition of such raisins by or before November 1 of the subsequent crop year. The Committee may pay the cost of transporting reserve tonnage from one handler to another and in the event a handler has more than one plant, the Committee may pay the cost of transporting reserve tonnage to the handler's plant of its choice. In each offer or reoffer of reserve tonnage raisins for export, the Committee may include a quantity of raisins not to exceed 2 percent of the total tonnage offered in such offer or reoffer, which it may sell to handlers whose regular allocation provides insufficient tonnage to fill a containerized freight shipping container: *Provided,* That such sale may be made only when the remaining portion of a handler's regular allocation will fill at least 50 percent of such container and shall be made to a handler only one time in each offer or reoffer of reserve tonnage raisins. No offer or reoffer shall be made until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer or reoffer, and the Secretary may disapprove the offer or reoffer or any term thereof: *Provided,* That at any time prior to the expiration of the 5-day period, the offer or reoffer may be made to handlers upon the Committee receiving from the Secretary notice that he does not disapprove the making of the offer or reoffer. Subject to the same conditions as are set forth in the preceding sentence with respect to the making of such offer or reoffer, the Committee may withdraw an offer or reoffer to sell reserve tonnage raisins to handlers or may extend the offer or reoffer period but not when such extension would deprive one or more handlers of an opportunity to purchase raisins. If the Committee includes in its terms of sale the minimum packer resale prices (effective pursuant to provisions of its export sales agreement with packers) it shall review annually the costs which determine the spread between the Committee's sale price of natural condition raisins and the packer's resale price of packed raisins and make such adjustments as it concludes are appropriate.

(2) Except for the final offer of the reserve tonnage from a crop year, an offer of reserve tonnage raisins for export shall provide for a specific tonnage. Each handler's share of the reserve tonnage offered prior to November 1 of any crop year shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the preceding crop year is of the free tonnage raisins acquired by all handlers during the preceding crop year who remain handlers. If reserve tonnage raisins have been removed by the committee from a handler's premises pursuant to § 989.66(f), such handler's allocation of reserve pool offers subsequent to such removal and prior to November 1 of the following crop year shall

be reduced by the percentage such removed reserve tonnage is of the total reserve tonnage acquired by such handler in the crop year. Subsequent to October 31, each handler's share shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by the handler during the then current crop year is of the total free tonnage raisins acquired by all handlers during the then current crop year. With respect to any offer other than the initial offer, each handler's share of the total quantity offered as of that date (the then current offer plus all prior offers of that crop year) shall first be determined by the appropriate formula. His share of the current offer shall then be determined by subtracting from his share of the total quantity offered, the total of his share of prior offers from the beginning of the crop year. If any handler did not acquire raisins during the preceding crop year, the basis for his share of any quantity of reserve tonnage raisins offered prior to November 1 shall be his acquisitions of free tonnage raisins during the then current crop year. The current free tonnage acquisitions of all such new handler shall, for the purposes of determining the shares of all handlers prior to November 1, be added to the total acquisitions of free tonnage raisins during the preceding crop year of all handlers in business at the time the offer is made.

(3) With respect to any offer of reserve for tonnage sale to handlers for resale in export, the Committee may provide that any such tonnage unpurchased at the end of the share reservation period will be reoffered to handlers without regard to shares and that approval for handlers' applications for purchase may be made in the same order in which the applications are received by the Committee. Such reoffer may be made by the Committee at the time it makes a regular offer of reserve tonnage, at any time during the period a regular offer is in effect, or within a reasonable time after a regular offer has expired.

(4) The final offer of the reserve tonnage from a crop year may be offered to handlers without regard to shares and approval of handler's applications for purchase may be made in the same order in which the applications are received by the Committee.

* * * * *

(j) The committee shall not sell reserve tonnage raisins of any varietal type to handlers to provide them with raisins to sell as free tonnage unless it files with the Secretary complete information and receives from the Secretary notice that he does not disapprove of such sale and that because of: National emergency; crop failure; major change of economic conditions; free tonnage shipments during the first 10 months of the then current crop year exceeding shipments of the comparable period of the prior crop year by more than 5 percent: *Provided,* That such sale of reserve tonnage shall be limited to the quantity exceeding 105 percent of shipments for the first 10 months of the prior crop year; or an inadequate carryover for September shipments, the free tonnage outlets cannot be reasonably well supplied by the tonnage released to the industry as a whole by the free tonnage percentage for that varietal type. Any quantities of reserve raisins made available for such sale to handlers shall be offered to them in the same manner as in subparagraph (1) of paragraph (d) of this section, with shares determined pursuant to subparagraph (2) of paragraph (d) of this section. However, such raisins shall not be sold at a price below that which the Committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the Committee, to which shall be added the costs to the equity holders incurred by the Committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: *Provided,* That, where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the Committee. The Committee may sell reserve tonnage raisins of any varietal type to any handler to provide him with raisins to sell as free tonnage if such handler has lost all or part of his free tonnage because of fire or other disaster beyond his control subject to the applicable provisions of this paragraph and in an amount equal to such tonnage so lost.

11. Revise the second sentence of § 989.82 to read:

§ 989.82 Expenses of reserve raisin operations.

* * * The Committee is authorized to pay any taxes assessed against raisins held by or for the account of the Committee on March 1, or such assessment date as later changed and then in effect, in the reserve pool established pursuant to this subpart: *Provided,* That any equity holder may pay his taxes upon giving notice to the Committee on or before May 1 of each year of his intention to do so. * * *

Dated: July 21, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-11578 Filed 7-25-72;8:50 am]

Farmers Home Administration

[7 CFR Part 1815]

(FHA Instruction 409.1)

RURAL DEVELOPMENT

Utilization of Gratuitous Services

Notice is hereby given that the Farmers Home Administration (FHA) is considering amending Subchapter A, "General Regulations," by the addition of a new Part 1815, "Rural Development—Utilization of Gratuitous Services," and is accepting gratuitous personnel assistance from certain public, nonprofit educational and charitable organizations for the purpose of permitting employees of these organizations to assist in the efforts of the FHA to provide housing and other assistance for the rural communities and people of the various States. Acceptance of this gratuitous personnel assistance is authorized by section 331(b) of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1981).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the Assistant Administrator for Management, Farmers Home Administration, U.S. Department of Agriculture, Room 5013, South Building, Washington, D.C. 20250, within 30 days after date of publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Assistant Administrator for Management during regular business hours (8:15 a.m. to 4:45 p.m.).

PART 1815—RURAL DEVELOPMENT—UTILIZATION OF GRATUITOUS SERVICES

Sec.
1815.1 General.
1815.2 Policy.
1815.3 Authority to accept gratuitous services.
1815.4 Scope of gratuitous service performed.
1815.5 Preparation and disposition of agreement forms.
1815.6 Records and reports.

AUTHORITY: The provisions of this Part 1815 issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; sec. 510, 63 Stat. 437, 42 U.S.C. 1480; Order of Act. Sec. of Agr., 36 F.R. 21523; Order of Asst. Sec. of Agr. for Rural Development and Conservation, 36 F.R. 21529.

§ 1815.1 General.

Section 331(b) of the Consolidated Farmers Home Administration Act of 1961, and section 506(a) of the Housing Act of 1949, empower the Secretary of Agriculture to accept and utilize voluntary and uncompensated services in carrying out the provisions of the above cited Acts. The Secretary has delegated those authorities to the Administrator of the Farmers Home Administration (FHA) in IAR 145 a and b.

§ 1815.2 Policy.

Voluntary and uncompensated (gratuitous) services may be accepted with the consent of the agency concerned, from the following sources under the conditions set forth in a form entitled, "Agreement for Utilization of (Official Title of Governing Body or Other Authorized Organization) By the Farmers Home Administration," which form is available in all FHA offices.

(a) Any agency of State government or of any territory or political subdivision.

(b) Public, nonprofit, educational, and charitable organizations, provided that no partisan, political, or profit motive is involved either explicitly or implicitly.

§ 1815.3 Authority to accept gratuitous services.

(a) State Directors; Director, Personnel Division; and Director, Finance Office, are hereby authorized to accept and utilize gratuitous services offered by the governmental agencies listed in § 1815.2 (a).

(b) An offer received by an FHA State or County Office from a source listed in § 1815.2(b) will be transmitted to the National Office, Attention: Assistant Administrator for Management, for decision. The offer will be accompanied by copies of the articles of incorporation and bylaws (if the organization is incorporated), a statement that the organization accepts the conditions sets forth in the Agreement form, and evidence that the organization is financially able to meet the required fiscal obligations of the agreement.

§ 1815.4 Scope of gratuitous service performed.

(a) Gratuitous services accepted in accordance with this Part may be utilized to perform any function performed by regular FHA employees (excluding Committeemen). Such services must not result in the displacement of employees. Most of the gratuitous services should be performed at the County Office level and conform to a standard FHA position description. A nonstandard position description may be developed and used, depending on current agency needs in a particular office and gratuitous skills available.

(b) Orientation and necessary training will be provided as necessary by FHA so that gratuitous services may be performed in accordance with current FHA procedure.

(c) Persons performing authorized gratuitous services will be held to the same standard as regular FHA employees performing similar duties. The issuance of, and accountability for, identification cards and clearance of employee accountability will be as prescribed by regulations available in all FHA offices. Such persons except Construction Inspectors, may when under direct supervision of County Supervisors, act as collection officers and be allowed to use receipt books in accordance with applicable regulations available in all FHA offices. Bonding will be provided by the agency or organization providing the services in accordance with the Agreement form.

§ 1815.5 Preparation and disposition of agreement forms.

(a) Agreements to accept and utilize gratuitous services must be identical to the Agreement form with the following exceptions:

(1) That the Emergency Employment Act (EEA) prohibition clause may be deleted if notification is received that the EEA grantee is authorized to offer FHA gratuitous services funded by their EEA grant.

(2) That the performance bond required may be either $10,000 or $5,000 depending on the criteria set forth in applicable FHA regulations.

(3) Other exceptions as may be authorized by the Office of the General Counsel, Department of Agriculture.

(b) Two copies of each signed Agreement form will be forwarded to the Personnel Division. One copy will be retained in the State or Finance Office.

§ 1815.6 Records and reports.

The FHA official signing the Agreement form will maintain records to show the names, duty assignments, time worked, and work locations of all persons performing gratuitous services. Copies of time reports submitted to the persons' employers should suffice. These records will be necessary to respond to occasional requests for reports on the acceptance and utilization of gratuitous services in the FHA.

Dated: July 20, 1972.

DARREL A. DUNN,
Acting Administrator,
Farmers Home Administration.

[FR Doc.72-11583 Filed 7-25-72;8:51 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 21]

FREQUENCY ASSIGNMENT TECHNIQUES FOR MICROWAVE SYSTEMS

Order Extending Time for Filing Comments

In the matter of the report on a study of frequency assignment techniques for microwave systems prepared for the Commission by Communications & Systems, Inc. (a subsidiary of Computer Sciences Corp.), Docket No. 19517.

1. The Electronic Industries Association (EIA) has requested the Commission to extend the time for filing comments in the above-captioned matter (FCC 72-468 released June 12, 1972) from August 31, 1972, to October 2, 1972.

2. In support of its request, EIA states that because of the complexity of some of the matters involved, it needs additional time to prepare comprehensive and meaningful comments.

3. It appears that the public interest would be served by granting the additional time requested to permit the petitioner and other interested parties a full opportunity for the preparation and presentation of their views in this inquiry to aid the Commission in evaluating the Computer Sciences Corp. study.

4. *Accordingly, it is ordered,* Pursuant to § 0.331(b)(4) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended from August 31, 1972, to October 2, 1972.

Adopted: July 17, 1972.

Released: July 18, 1972.

[SEAL] JAMES E. BARR,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.72-11553 Filed 7-25-72;8:48 am]

VETERANS ADMINISTRATION

[38 CFR Part 9]

CADETS AND MIDSHIPMEN AT SERVICE ACADEMIES OF THE ARMED FORCES

Membership in SGLI

Section 9.1, Title 38, Code of Federal Regulations, sets forth the definitions pertaining to Servicemen's Group Life Insurance. It is proposed to amend paragraph (a)(1) and add paragraph (b)(4) to this section to include Cadets and Midshipmen at the Service Academies of the Armed Forces. This change is in accordance with Public Law 92-315 (86 Stat. 227).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (232H), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting central office for the purpose of inspecting any such comments will be received by Central Office Veterans Assistance Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in central office and furnished the address and the above room number.

Notice is also given that it is proposed to make the proposed regulation, if adopted, effective June 20, 1972, the date of approval of Public Law 92-315.

It is proposed to amend § 9.1 of Part 9, Chapter I, Title 38, Code of Federal Regulations, by amending subparagraph (1) to paragraph (a), and adding

subparagraph (4) to paragraph (b) to read as follows:

§ 9.1 Definitions.

(a) The term "member" means (1) a person on active duty, active duty for training, or inactive duty training in the Uniformed Services in a commissioned, warrant, or enlisted rank or grade, or as a cadet or midshipman at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, or the U.S. Coast Guard Academy.

* * * * *

(b) The term "active duty" means * * *

(4) Full-time duty as a cadet or midshipman at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, or the U.S. Coast Guard Academy.

* * * * *

By direction of the Administrator.

Approved: July 19, 1972.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.72-11539 Filed 7-25-72;8:47 am]

Notices

DEPARTMENT OF THE INTERIOR

National Park Service

JEFF BUSBY PARK, NATCHEZ TRACE PARKWAY

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Mr. C. W. Gary, authorizing him to provide concession facilities and services for the public at Jeff Busby Park, Natchez Trace Parkway, for a period of five (5) years from January 1, 1973, through December 31, 1977.

The foregoing concessioner has performed his obligations under the expiring contract to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Chief of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Date: July 12, 1972.

RAYMOND L. FREEMAN,
Acting Director,
National Park Service.

[FR Doc.72-11507 Filed 7-25-72:8:45 am]

[Order 5]

SUPERINTENDENTS, ET AL., NATIONAL CAPITAL PARKS

Delegation of Authority

Section 1. Superintendents. The National Park Service Superintendents of National Capital Parks, whose positions are allocated to Civil Service Grade GS–14 and above, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority now or hereafter delegated to the Director, National Capital Parks, by the Director, National Park Service, except with respect to the following:

(a) Approval of Master Plans.

(b) Acceptance of an offer in settlement of a timber trespass unless (1) the trespass is an innocent one, (2) the damages therefrom do not exceed $500 and (3) payment of the full amount of the damages is offered.

(c) Authority to execute the land acquisition program, including contracting for acquisition of lands and related property, and options and offers to sell related thereto.

(d) Authority to approve land acquisition priorities.

(e) Authority to approve contracts and purchase orders for supplies, equipment, and services; provided that the Superintendent, Antietam-C&O Canal National Park Service Group is authorized to approve such contracts and purchase orders not to exceed $2,000; and further provided that in case of emergency all Superintendents to whom this section applies are authorized to approve such contracts and purchase orders not to exceed $2,000.

Section 2. The National Park Service Superintendents of National Capital Parks, whose positions are allocated to Civil Service Grades GS–11, GS–12, and GS–13, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority now or hereafter delegated to the Director, National Capital Parks, by the Director, National Park Service, except with respect to the following matters:

(a) Approval of Master Plans.

(b) Acceptance of an offer in settlement of a timber trespass unless (1) the trespass is an innocent one, (2) the damages therefrom do not exceed $500 and (3) payment of the full amount of the damages is offered.

(c) Issuance of revocable special use permits having a term of more than 3 years.

(d) Authority to execute the land acquisition program, including contracting for acquisition of lands and related property, and options and offers to sell related thereto.

(e) Authority to approve land acquisition priorities.

(f) Authority to aprove contracts and purchase ordres for supplies, equipment, and services; provided that the Superintendents, Catoctin, Baltimore-Washington Parkway, and Prince William Forest Park are authorized to approve such contracts and purchase orders not to exceed $2,000; and further provided that in case of emergency, all Superintendents to whom this section applies are authorized to approve such contracts and purchase orders not to exceed $2,000.

Section 3. Associate Directors, Assistant Directors and Chief, Office of Programing and Budgeting. The Associate Directors, Assistant Directors, and the Chief, Office of Programing and Budgeting, may exercise all the authority of the Director, National Capital Parks, with respect to any matter which may come before them, except the authority to approve master plans.

Section 4. Chief, Division of Property Management and General Services and Procurement Officer. The Chief, Division of Property Management and General Services, may execute, administer, and approve contracts not in excess of $200,000 for construction, supplies, equipment, and services, except contracts for acquisition of lands and related property and options related thereto. The Procurement Officer, National Capital Parks, may execute and approve contracts not in excess of $100,000 fo rsupplies, equipment, and services, except contracts for acquisition of lands and related property and options related thereto. This authority may be exercised by these officers on behalf of any office or area for which the National Capital Parks serves as the field finance office.

Section 5. Chief, Division of Lands. The Chief, Division of Lands, is authorized to exercise the following authority as to land acquisition funded by Land and Water Conservation funds:

(a) Approval and acceptance of options and offers to sell to, or exchange with the United States, lands or interests in lands within areas under the jurisdiction and control of National Capital Parks, National Park Service, and to execute all necessary agreements and conveyances incident thereto.

(b) Acceptance of deeds conveying to the United States lands, or interests in lands, under the jurisdiction and control of the Director, National Capital Parks, National Park Service.

(c) Approve on behalf of the National Park Service offers of settlement in condemnation cases. Approvals of offers of settlement by him will be communicated to the appropriate office of the Solicitor's Office of the Department of the Interior for such further action as may be proper.

Section 6. Field Land Acquisition Officers. Field Land Acquisition Officers are authorized to exercise authority, on assigned projects, with respect to the following:

(a) Approval and acceptance of options and offers to sell to or exchange with the United States, lands or interests in lands, within areas under the jurisdiction of the National Park Service within their respective areas, and to execute all necessary agreements and conveyances incident thereto when the amount involved does not exceed $100,000.

(b) Acceptance of deeds conveying to the United States lands, or interests in lands, within their respective areas.

Section 7. Redelegation. Superintendents may, in writing, redelegate to any officer or employee the authority delegated to him by this order. Each redelegation shall be published in the FEDERAL REGISTER.

Section 8. Revocation. This order supersedes National Capital Parks Order No. 3, as amended; however, redelegations based thereon are continued in effect to the extent that they are not in conflict with this order. (National Park Service Order 68 (36 F.R. 13802), dated July 24, 1971, as amended.)

RUSSELL E. DICKENSON,
Director, National Capital Parks.

[FR Doc.72-11359 Filed 7-25-72;8:45 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

MEAT IMPORT LIMITATIONS

Third Quarterly Estimates

Public Law 88-482, approved August 22, 1964 (hereinafter referred to as the Act), provides for limiting the quantity of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep, except lamb (TSUS 106.20), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of such articles, in the absence of limitations during such calendar year, would equal or exceed 110 percent of the estimated quantity of such articles, prescribed by section 2(a) of the Act.

In accordance with the requirements of the Act, the following third quarterly estimates are published:

1. The estimated aggregate quantity of such articles which would, in the absence of limitations under the Act, be imported during calendar year 1972 is 1,240.0 million pounds.

2. The estimated quantity of such articles prescribed by section 2(a) of the Act during the calendar year 1972 is 1,042.4 million pounds.

Since the estimated quantity of imports continues to exceed 110 percent of the estimated quantity prescribed by section 2(a) of the Act, under the Act limitations for the calendar year 1972 on the importation of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep (TSUS 106.20), are required to be imposed but may be suspended. Such limitations were imposed by Proclamation 4114 of March 9, 1972, and were suspended during the balance of the calendar year 1972 unless because of changed circumstances further action under the Act becomes necessary.

Done at Washington, D.C., this 21st day of July 1972.

EARL L. BUTZ,
Secretary of Agriculture.

[FR Doc.72-11586 Filed 7-25-72;8:51 am]

Rural Electrification Administration

CENTRAL ELECTRIC POWER COOP., INC., CAYCE, S.C. 29033

Final Environmental Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Final Environmental Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a reclassification of loan funds requested by the borrower. This reclassification provides for the installation of a 20-MW gas turbine on Hilton Head Island, S.C.

Additional information may be secured on request, submitted to Mr. James N. Myers, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC, Room 4322 or at the borrower address indicated above.

Final REA action with respect to this matter (including any release of funds) may be taken after 30 days, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 20th day of July 1972.

E. C. WEITZELL,
Acting Administrator,
Rural Electrification Administration.

[FR Doc.72-11535 Filed 7-25-72;8:47 am]

Soil Conservation Service

EAST FORK OF WHITEWATER RIVER, WAYNE, UNION, RANDOLPH, FAYETTE, AND FRANKLIN COUNTIES, IND., DARKE AND PREBLE COUNTIES, OHIO

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, Department of Agriculture, has prepared a final environmental statement for the East Fork of Whitewater River Watershed Project, USDA-SCS-ES-WS-(Adm)-72-14(F).

The environmental statement concerns a plan for reducing flooding, providing agricultural drainage, municipal and industrial water supply, and recreation storage. The planned works of improvement include conservation land treatment over the entire watershed. These measures are to be supplemented by three multiple-purpose structures for flood prevention and public recreation with associated recreation facilities, two multiple-purpose structures for flood prevention and municipal and industrial water supply, one single-purpose floodwater retarding structure, 10.3 miles of stream environmental corridor development for public recreation, and 19.6 miles of multiple-purpose channel improvement for flood prevention and drainage.

The final environmental statement was filed with CEQ on July 17, 1972.

Copies are available for inspection during regular working hours at the following locations:

USDA, Soil Conservation Service, Washington Office, South Agriculture Building, Room 5227, 12th Street and Independence Avenue SW., Washington, D.C. 20250.

USDA, Soil Conservation Service, Atkinson Square West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, IN 46224.

USDA, Soil Conservation Service, 311 Old Federal Building, Third and State Streets, Columbus, Ohio 43215.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151 for $3 each. Please refer to the name and number of statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Dated: July 21, 1972.

NORMAN A. BERG,
Acting Administrator,
Soil Conservation Service.

[FR Doc.72-11585, Filed 7-25-72;8:51 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-288]

AMERICAN EXPORT LINES, INC.

Notice of Application

Notice is hereby given that American Export Lines, Inc. (formerly American Export Isbrandtsen Lines, Inc.), has filed application for operating-differential subsidy for a maximum of 55 sailings per annum between U.S. North Atlantic ports on Trade Route No. 5-7-8-9, South Atlantic ports on Trade Route No. 11 as far south as Savannah, Ga., and ports in the United Kingdom, Republic of Ireland, and Atlantic Europe (Germany to the northern border of Portugal). At the present time the applicant is providing a nonsubsidized service on Trade Route No. 5-7-8-9 at the rate of four sailings per month but does not call at U.S. South Atlantic ports on Trade Route No. 11.

Any person, firm, or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should, by the close of business on August 11, 1972, notify the Secretary, Maritime Subsidy Board, in writing in triplicate, and file petition for leave to intervene in accordance with the rules

of practice and procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. Registry in such service, route, or line is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

By Order of the Maritime Subsidy Board/Maritime Administration.

Dated: July 24, 1972.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-11685 Filed 7-25-72;8:51 am]

[Docket No. S-287]

TYLER TANKER CORP. ET AL.

Notice of Application

Notice is hereby given that Tyler Tanker Corp., Polk Tanker Corp., and Langfitt Shipping Corp. have filed application for a waiver under the provisions of section 804 of the Merchant Marine Act, 1936, as amended, to permit their parent company, Seatrain Lines, Inc., its subsidiaries, affiliates and/or associates to continue the time chartering of foreign-flag ships as named and operated in the following services (including ships under construction, as indicated):

SEATRAIN LINE—FOREIGN-FLAG OPERATIONS

LINER SERVICES

U.S. Atlantic/Europe (T.R. 5-7-8-9 and 11):
- Euroliner.
- Asialiner.
- Eurofreighter.
- Asiafreighter (launched February 12, 1972—not yet in service).
- Taeping (Advertised as currently operated in this service).
- Verona (operated in this service in 1970—appears to have operated in Mediterranean since that time and laid up Piraeus April 4, 1972).

California/Japan (T.R. 29):
- Fiery Cross Isle.
- Spindrift Isle.
- Lord of the Isle.

Foreign feeder service:
- Scantrain—Netherlands and Germany/Scandinavia.
- Plutos (appears to be operating in Western Europe from limited references available).

OTHERS

Pluvius—Containership launched April 8, 1972, and not yet in service. No information as to possible employment.

VESSELS UNDER CONSTRUCTION

(CHARTERED BY SEATRAIN LINES, INC., ITS SUBSIDIARIES, AFFILIATES AND/OR ASSOCIATES)

Vessel name or hull No.	Flag of registry	General vessel type	Deadweight tonnage	Vessel owner
Ariadne	Sweden	Oil/bulk/ore	101,000	Showa Shipping Co., Ltd.
MHI Hull 1691	NA	Tanker	233,200	C. Itoh & Co., Ltd.
NA	Greece	do	65,711	Essen Tankers, Inc.
Hull No. 2283	NA	do	265,000	Burmah Oil Tanker, Ltd.
No. ZSM 523 (Tarros class)	British	Containership	1,900	Sea Container Chartering Ltd.

Excluded from the above listing are the foreign-flag ships owned, chartered, or operated by Seatrain, its subsidiaries, affiliates and/or associates which are engaged in the carriage of dry or liquid cargoes in bulk, and which ships were included in the listing of foreign-flag activities previously reported by Seatrain pursuant to section 804(d) of the Merchant Marine Act, 1936, as amended. The application for waiver is in conjunction with applications filed for 20-year operating-differential-subsidy contracts.

Any person, firm, or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit same in writing in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C., by the close of business on August 17, 1972. The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

By order of the Maritime Subsidy Board.

Dated: July 21, 1972.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-11588 Filed 7-25-72;8:50 am]

MERCANTILE-SAFE DEPOSIT & TRUST CO.

Notice of Approval of Applicant as Trustee

Notice is hereby given that Mercantile-Safe Deposit & Trust Co., with offices at 2 Hopkins Plaza, Baltimore, MD, has been approved as Trustee pursuant to Public Law 89-346 and 46 CFR 221.21-221.30.

Dated: July 19, 1972.

BURT KYLE,
Chief,
Office of Domestic Shipping.

[FR Doc.72-11587 Filed 7-25-72;8:50 am]

Office of Import Programs

UNIVERSITY OF WISCONSIN, ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles, for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Section 701.8 of the regulations provides in pertinent part:

> The applicant shall on or before the 20th day following the date of such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period. * * * If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of § 701.11.

The meaning of the subsection is that should an applicant either fail to notify the Deputy Assistant Secretary of its intent to resubmit another application for the same article to which the denial without prejudice relates within the 20-day period, or fails to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above, therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Section 701.8 further provides:

* * * the Deputy Assistant Secretary shall transmit a summary of the prior denial without prejudice to resubmission to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant.

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Deputy Assistant Secretary.

Docket No. 70-00575-01-77030. Applicant: University of Wisconsin-Parkside, Woods Road, Kenosha, Wis. 53140. Article: NMR Spectrometer, Model JNM-MH-60-II. Date of denial without prejudice to resubmission: April 11, 1972.

Docket No. 70-00576-33-43780. Applicant: Presbyterian-St. Luke's Hospital, 1753 West Congress Parkway, Chicago, IL 60612. Article: Incubator slide containing MacConkeys nutrient agar. Date of denial without prejudice to resubmission: April 5, 1972.

Docket No. 71-00331-65-25300. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Article: Electrical discharge machine, Model DL-S. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 71-00434-33-46040. Applicant: Tufts University, Department of Pathology, 136 Harrison Avenue, Boston, MA 02111. Article: Electron microscope, JEM-100B. Date of denial without prejudice to resubmission: April 5, 1972.

Docket No. 71-00605-01-10520. Applicant: Federal Bureau of Investigation, U.S. Department of Justice. Article: Vapor Trace Analyzer, Model 103A. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 71-00614-65-72000. Applicant: Michigan State University, East Lansing, Mich. 48823. Article: Single drive unit for Weissenberg Rheogoniometer. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 71-00623-01-77030. Applicant: University of Vermont, Department of Chemistry, Burlington, Vt. 05401. Article: NMR Spectrometer System, Model JNM-MH-100. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 72-00011-01-77030. Applicant: University of California, Department of Chemistry, Division of Natural Sciences, Santa Cruz, Calif. 95060. Article: NMR Spectrometer Model JNM-PS-100. Date of denial without prejudice to resubmission: April 11, 1972.

Docket No. 72-00034-99-66700. Applicant: Thomas S. Clarkson Memorial College of Technology, Potsdam, N.Y. 13676. Article: Teleprinter projector, Model 2510T. Date of denial without prejudice to resubmission: April 5, 1972.

Docket No. 72-00053-99-46040. Applicant: State University of New York, Department of Anatomy, Stony Brook, N.Y. 11790. Article: Electron microscope, Model HU-12. Date of denial without prejudice to resubmission: April 5, 1972.

Docket No. 72-00061-33-43780. Applicant: County of Sacramento Medical Center, 2315 Stockton Boulevard, Sacramento, CA 95817. Article: Isotron stand. Date of denial without prejudice to resubmission: April 5, 1972.

Docket No. 72-00068-33-46500. Applicant: Temple University, School of Dentistry, Department of Pathology, 3223 North Broad Street, Philadelphia, PA 19140. Article: Ultramicrotome, Model OM U2. Date of denial without prejudice to resubmission: April 3, 1972.

Docket No. 72-00076-33-77040. Applicant: Galesburg State Research Hospital, Research Division, 1801 North Seminary Street, Galesburg, IL 61401. Article: Gas chromatograph—mass spectrometer, Model CH 7. Date of denial without prejudice to resubmission: April 3, 1972.

Docket No. 72-00081-91-80300. Applicant: University of Alaska, Geophysical Institute, College, Alaska 99701. Article: Temperature recorder. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 72-00094-33-54500. Applicant: University of Michigan, Department of Opthalmology, Ann Arbor, Mich. 48104. Article: Tubinger perimeter. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 72-00098-33-40700. Applicant: Washington University, School of Medicine, Mallinckrodt Institute of Radiology, 510 South Kingshighway, St. Louis, MO 63110. Article: Irradiation unit. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 72-00105-33-40700. Applicant: Kensington Hospital, 136 West Diamond Street, Philadelphia, PA 19122. Article: Irradiator model RW-1, one probe. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 72-00107-01-77030. Applicant: Sangamon State University, Chemistry Department, Springfield, Ill. 62703. Article: NMR spectrometer, JNM-MH-100. Date of denial without prejudice to resubmission: April 12, 1972.

Docket No. 72-00126-33-71200. Applicant: University of Chicago, 950 East 59th Street, Chicago, IL 60637. Article: Freezer-Dryer, FT-1. Date of denial without prejudice to resubmission: April 12, 1972.

SETH M. BODNER,
Director,
Office of Imports Programs.

[FR Doc.72-11536 Filed 7-25-72;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 1626]

CERTAIN PREPARATIONS CONTAINING XANTHINE DERIVATIVES

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

OXTRIPHYLLINE PREPARATIONS

1. Choledyl tablets containing oxtriphylline; Warner-Chilcott Laboratories Division, Warner Lambert Pharmaceutical Co., 210 Tabor Road, Morris Plains, N.J. 07950 (NDA 9-268).

2. Cholarace tablets containing oxtriphylline, racephedrine hydrochloride, and pentobarbital; Warner-Chilcott Laboratories (NDA 10-888).

DYPHYLLINE PREPARATIONS

1. Neothylline tablets containing dyphylline; Lemmon Pharmacal Co., Cathill and Lonely Roads, Sellersville, Pa. 18960 (NDA 7-794).

2. Neothylline Intramuscular containing dyphylline; Lemmon Pharmacal Co. (NDA 9-088).

AMINOPHYLLINE PREPARATIONS

1. Aminophyllin tablets containing aminophylline; G. D. Searle & Co., Post Office Box 5110, Chicago, Ill. 60680 (NDA 2-386).

2. Aminophyllin enteric coated tablets containing aminophylline; G. D. Searle & Co. (NDA 2-385).

3. Aminophyllin with phenobarbital tablets containing aminophylline and phenobarbital; G. D. Searle & Co. (NDA 3-832).

4. Aminophylline tablets; Cole Pharmacal Co., Inc., 3721 Laclede Avenue, St. Louis, Mo. 63108 (NDA 4-096).

5. Aminophylline with phenobarbital tablets; Cole Pharmacal Co., Inc. (NDA 4-096).

6. Amodrine tablets containing aminophylline, phenobarbital and racephedrine hydrochloride; G. D. Searle & Co. (NDA 2-384).

THEOPHYLLINE AND THEOPHYLLINE SODIUM GLYCINATE PREPARATIONS

1. Synophylate tablets, elixir, and suppositories containing theophylline sodium glycinate; The Central Pharmacal Co., 116-128 East Third Street, Seymour, Ind. 47274 (NDA 6-333).

2. Synophylate with phenobarbital tablets containing theophylline sodium glycinate and phenobarbital; The Central Pharmacal Co. (NDA 6-333).

3. Theoglycinate tablets and syrup containing theophylline sodium glycinate; Brayten Pharmaceutical Co.,

1715 West 38th Street, Chattanooga, Tenn. 37409 (NDA 6-158).

4. Theoglycinate with phenobarbital tablets containing theophylline sodium glycinate and phenobarbital; Brayten Pharmaceutical Co. (NDA 6-158).

5. Theoglycinate with racephedrine and phenobarbital tablets containing theophylline sodium glycinate, phenobarbital, and racephedrine hydrochloride; Brayten Pharmaceutical Co. (NDA 6-158).

6. Phedorine tablets (formerly Theophedrine with phenobarbital tablets) containing theophylline, phenobarbital, and ephedrine hydrochloride; Tilden-Yates Laboratories, Inc., Fairfield Road, Wayne, N.J. 07470 (NDA 1-626).

7. Asminyl tablets and asminyl slosol pink tablets containing theophylline, sodium phenobarbital, and ephedrine sulfate; Cole Pharmacal Co., Inc. (NDA 3-523).

8. Asminyl liquid containing theophylline sodium salicylate, sodium butabarbital, and ephedrine sulfate; Cole Pharmacal Co., Inc. (NDA 3-523).

9. Arteminyl sublingual tablets (now marketed as Iso-Asminyl) containing theophylline, sodium phenobarbital, isoproterenol hydrochloride, and ephedrine sulfate; Cole Pharmacal Co., Inc. (NDA 3-523).

10. Marax syrup containing theophylline, hydroxyzine hydrochloride, and ephedrine sulfate; J. B. Roerig Division, Pfizer Pharmaceuticals, 235 East 42d Street, New York, NY 10017 (NDA 12-879).

11. Marax tablets containing theophylline, hydroxyzine hydrochloride, and ephedrine sulfate; J. B. Roerig Division, Pfizer Pharmaceuticals (NDA 11-768).

AMBUPHYLLINE PREPARATIONS

1. Nethaphyl regular strength capsules and nethaphyl half strength capsules containing ambuphylline, etafedrine hydrochloride, and phenobarbital; Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 110 East Amity Road, Cincinnati, Ohio 45215 (NDA 6-359).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). The effectiveness classification and marketing status are described below.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that:

1. *Rectal suppositories containing theophylline sodium glycinate as the sole active ingredient.* a. Are probably effective for bronchial asthma.

b. Are possibly effective as labeled for use in status asthmaticus, congestive heart failure, or as a diuretic in congestive heart failure, paroxysmal cardiac dyspnea, coronary artery diseases and angina, allaying pruritis, and relieving sensitization dermatoses.

c. Lack substantial evidence of effectiveness as labeled for use in Cheyne-Stokes respiration and "bronchospastic type chronic hypertrophic pulmonary emphysema."

2. *Other drugs listed in this announcement.* a. These drugs lack substantial evidence of effectiveness as labeled for use in "pulmonary infections associated with bronchospasm," dyspnea induced by exertion and cough, Cheyne-Stokes respiration, status asthmaticus, "bronchospastic type of chronic hypertrophic pulmonary emphysema," "other pulmonary disorders," or as a sedative.

b. These drugs are possibly effective as labeled for use in bronchial asthma; bronchitis, bronchiectasis, and emphysema in which bronchospasm is present; paroxysmal cardiac or nocturnal dyspnea; biliary colic, renal colic; hay fever; congestive heart failure or as a diuretic in congestive heart failure, premenstrual fluid retention and drug induced edema; coronary artery disease and angina pectoris; allaying pruritis and in relieving sensitization dermatoses; pulmonary edema due to cardiac decompensation; the relief of bronchospasm; nasal allergy; or for use as respiratory center stimulants and expectorants.

B. *Marketing status.* 1. Within 60 days of the date of publication of this announcement in the FEDERAL REGISTER, the holder of any approved new drug application for which a drug is classified in paragraph A above as lacking substantial evidence of effectiveness is requested to submit a supplement to his application, as needed, to provide for revised labeling which deletes those indications for which substantial evidence of effectiveness is lacking. Such a supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new drug regulations (21 CFR 130.9 (d) and (e)) which permit certain changes to be put into effect at the earliest possible time, and the revised labeling should be put into use within the 60-day period. Failure to do so may result in a proposal to withdraw approval of the new drug application.

2. If any such preparation is on the market without an approved new-drug application, its labeling should be revised if it includes those claims for which substantial evidence of effectiveness is lacking as described in paragraph A above. Failure to delete such indications and put the revised labeling into use within 60 days after the date of publication hereof in the FEDERAL REGISTER may cause the drug to be subject to regulatory proceedings.

3. Labeling revised pursuant to this notice should take into account the comments of the Academy; furnish adequate information for safe and effective use of the drug; and recommend use of the drug having a probably effective indication as follows: (The possibly effective indications for that drug may also be included in the labeling for 6 months.)

RECTAL SUPPOSITORIES CONTAINING THEOPHYLLINE SODIUM GLYCINATE

INDICATION

Bronchial Asthma.

4. The notice "Conditions for Marketing New Drugs Evaluated in the Drug Efficacy Study" published in the FEDERAL REGISTER July 14, 1970 (35 F.R. 11273), describes in paragraphs (c), (d), (e), and (f) the marketing status of a drug labeled with those indications for which it is regarded as probably effective and possibly effective.

A copy of the Academy's report has been furnished to each firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 1626, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD-100), Bureau of Drugs.
Original new-drug applications: Office of Scientific Evaluation (BD-100), Bureau of Drugs.
Requests for the Academy's report: Drug Efficacy Study Information Control (BD-67), Bureau of Drugs.
All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 28, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-11518 Filed 7-25-72;8:46 am]

[DESI 11145; Docket No. FDC-D-322; NDA 11-145 et al.]

CERTAIN THIAZIDES

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following single entity thiazide drugs:

1. Fovane Tablets, containing benzthiazide; marketed by Chas. Pfizer and Co., 235 East 42d Street, New York, NY 10017 (NDA 12-128).

2. Esidrix Tablets, containing hydrochlorothiazide; marketed by Ciba Pharmaceutical Co., 556 Morris Avenue, Summit, NJ 07901 (NDA 11-793).

3. Exna Tablets, containing benzthiazide; marketed by A. H. Robins Co., 1407 Cummings Drive, Richmond, VA 23220 (NDA 12-489).

4. Saluron Tablets, containing hydroflumethiazide; marketed by Bristol Laboratories, Division of Bristol-Myers Co., Thompson Road, Post Office Box 657, Syracuse, NY 13201 (NDA 11-949).

5. Renese Tablets, containing polythiazide; Chas. Pfizer & Co. (NDA 12-845).

6. Metahydrin Tablets, containing trichlormethiazide; marketed by Lakeside Laboratories, Division of Colgate-Palmolive Co., 1707 East North Avenue, Milwaukee, WI 53201 (NDA 12-594).

7. Diuril Syrup, containing chlorothiazide; marketed by Merck Sharp & Dohme, Division of Merck and Company, Inc., West Point, Pa. 19486 (NDA 11-870).

8. Diuril Lyovac Powder for Injection, containing chlorothiazide as the sodium salt; Merck Sharp & Dohme (NDA 11-145).

9. Diuril Tablets, containing chlorothiazide; Merck Sharp and Dohme (NDA 11-145).

10. Naqua Tablets, containing trichlormethiazide; marketed by Schering Corp., 60 Orange Street, Bloomfield, NJ 07003 (NDA 12-265).

11. Hydrodiuril Tablets, containing hydrochlorothiazide; Merck Sharp & Dohme (NDA 11-835).

12. Enduron Tablets, containing methyclothiazide; marketed by Abbott Laboratories, 14th Street and Sheridan Road, North Chicago, Ill. 60064 (NDA 12-524).

13. Oretic Tablets, containing hydrochlorothiazide; Abbott Laboratories (NDA 11-971).

14. Naturetin Tablets, containing bendroflumethiazide; marketed by E. R. Squibb and Sons, Inc., Georges Road, New Brunswick, N.J. 08903 (NDA 12-164).

15. Saluron Syrup, containing hydroflumethiazide; Bristol Laboratories (NDA 12-058).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. A new drug application is required from any person marketing such drug without approval.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that:

1. These thiazide drugs in the dosage forms listed above are effective as adjunctive therapy in the treatment of edema due to congestive heart failure, hepatic cirrhosis, and corticosteroid and estrogen administration; and edema caused by renal disorders such as nephrotic syndrome, acute glomerulonephritis, and chronic renal failure; in the management of hypertension when used alone or as adjunctive therapy; in the control of hypertension in pregnancy; and severe or marked edema when due to pregnancy. The routine use of diuretics in an otherwise healthy pregnant woman is contraindicated and possibly hazardous.

2. These drugs are probably effective for treatment of toxemia of pregnancy; angina accompanying congestive heart failure and/or hypertension; and "drug induced" edema.

3. The drugs are possibly effective for treatment of edema of localized origin; prevention of the development of toxemia during pregnancy; and premenstrual acne flare.

4. The drugs lack substantial evidence of effectiveness for the following claimed indications: "All" types of edema; edema of obesity; edema due to premenstrual tension; fluid retention masked by obesity; and prevention of edema of pregnancy.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Such preparations are in a form suitable for oral administration. Chlorothiazide, as the sodium salt, is a powder suitable for reconstitution and intravenous administration.

2. *Labeling conditions.* a. The labels bear the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drugs are labeled to comply with all requirements of the Act and regulations and their labeling bears adequate information for safe and effective use of the drug.

Those parts of the labeling indicated below are substantially as follows:

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTION

The mechanism of action results in an interference with the renal tubular mechanism of electrolyte reabsorption. At maximal therapeutic dosage all thiazides are approximately equal in their diuretic potency. The mechanism whereby thiazides function in the control of hypertension is unknown.

INDICATIONS

---------- is indicated as adjunctive (Drug)
therapy in edema associated with congestive heart failure, hepatic cirrhosis and corticosteroid and estrogen therapy.

---------- has also been found useful in (Drug)
edema due to various forms of renal dysfunction as:

Nephrotic syndrome;
Acute glomerulonephritis; and
Chronic renal failure.

---------- is indicated in severe edema (Drug)
when due to pregnancy. (See "Contraindications" and "Warnings" below.)

Diuretics are indicated in the management of hypertension either as the sole therapeutic agent or to enhance the effect of other antihypertensive drugs in the more severe forms of hypertension and in the control of hypertension of pregnancy.

The drug is also indicated in toxemia of pregnancy (eclampsia); angina due to congestive heart failure and/or hypertension; and "drug induced" edema.

For intravenous chlorothiazide add: Use only when patients are unable to take oral medication.

CONTRAINDICATIONS

Anuria.

Hypersensitivity to this or other sulfonamide derived drugs.

The routine use of diuretics in an otherwise healthy pregnant woman with or without mild edema is contraindicated and possibly hazardous.

WARNINGS

Should be used with caution in severe renal disease. In patients with renal disease, thiazides may precipitate azotemia. Cumulative effects of the drug may develop in patients with impaired renal function.

Thiazides should be used with caution in patients with impaired hepatic function or progressive liver disease, since minor alterations of fluid and electrolyte balance may precipitate hepatic coma.

Thiazides may be additive or potentiative of the action of other antihypertensive drugs. Potentiation occurs with ganglionic or peripheral adrenergic blocking drugs.

Sensitivity reactions may occur in patients with a history of allergy or bronchial asthma.

The possibility of exacerbation or activation of systemic lupus erythematosus has been reported.

USAGE IN PREGNANCY

Usage of thiazides in women of childbearing age requires that the potential benefits of the drug be weighed against its possible hazards to the fetus. These hazards include fetal or neonatal jaundice, thrombocytopenia, and possibly other adverse reactions which have occurred in the adult.

NURSING MOTHERS

Thiazides cross the placental barrier and appear in cord blood and breast milk.

PRECAUTIONS

Periodic determination of serum electrolytes to detect possible electrolyte imbalance should be performed at appropriate intervals.

All patients receiving thiazide therapy should be observed for clinical signs of fluid or electrolyte imbalance; namely, hyponatremia, hypochloremic alkalosis, and hypokalemia. Serum and urine electrolyte determinations are particularly important when the patient is vomiting excessively or receiving parenteral fluids. Medication such as digitalis may also influence serum electrolytes. Warning signs, irrespective of cause, are: Dryness of mouth, thirst, weakness, lethargy, drowsiness, restlessness, muscle pains or cramps, muscular fatigue, hypotension, oliguria, tachycardia, and gastrointestinal disturbances such as nausea and vomiting.

Hypokalemia may develop with thiazides as with any other potent diuretic, especially with brisk diuresis, when severe cirrhosis is present, or during concomitant use of corticosteroids or ACTH.

Interference with adequate oral electrolyte intake will also contribute to hypokalemia. Digitalis therapy may exaggerate metabolic effects of hypokalemia especially with reference to myocardial activity.

Any chloride deficit is generally mild and usually does not require specific treatment except under extraordinary circumstances (as in liver disease or renal disease). Dilutional hyponatremia may occur in edematous patients in hot weather; appropriate therapy is water restriction, rather than administration of salt except in rare instances when the hyponatremia is life threatening. In actual salt depletion, appropriate replacement is the therapy of choice.

Hyperuricemia may occur or frank gout may be precipitated in certain patients receiving thiazide therapy.

Insulin requirements in diabetic patients may be increased, decreased, or unchanged. Latent diabetes mellitus may become manifest during thiazide administration.

Thiazide drugs may increase the responsiveness to tubocurarine.

The antihypertensive effects of the drug may be enhanced in the postsympathectomy patient.

Thiazides may decrease arterial responsiveness to norepinephrine. This diminution is

not sufficient to preclude effectiveness of the pressor agent for therapeutic use.

If progressive renal impairment becomes evident, as indicated by a rising nonprotein nitrogen or blood urea nitrogen, a careful reappraisal of therapy is necessary with consideration given to withholding or discontinuing diuretic therapy.

Thiazides may decrease serum PBI levels without signs of thyroid disturbance.

ADVERSE REACTIONS

A. GASTROINTESTINAL SYSTEM REACTIONS

1. anorexia
2. gastric irritation
3. nausea
4. vomiting
5. cramping
6. diarrhea
7. constipation
8. jaundice (intrahepatic cholestatic jaundice)
9. pancreatitis

B. CENTRAL NERVOUS SYSTEM REACTIONS

1. dizziness
2. vertigo
3. parasthesias
4. headache
5. xanthopsia

C. HEMATOLOGIC REACTIONS

1. leukopenia
2. agranulocytosis
3. thrombocytopenia
4. aplastic anemia

D. DERMATOLOGIC—HYPERSENSITIVITY REACTIONS

1. purpura
2. photosensitivity
3. rash
4. urticaria
5. necrotizing angiitis (vasculitis) (cutaneous vasculitis)

E. CARDIOVASCULAR REACTION

Orthostatic hypotension may occur and may be aggravated by alcohol, barbiturates or narcotics.

F. OTHER

1. hyperglycemia
2. glycosuria
3. hyperuricemia
4. muscle spasm
5. weakness
6. restlessness

Whenever adverse reactions are moderate or severe, thiazide dosage should be reduced or therapy withdrawn.

DOSAGE AND ADMINISTRATION

Therapy should be individualized according to patient response. This therapy should be titrated to gain maximal therapeutic response as well as the minimal dose possible to maintain that therapeutic response.

Parenteral therapy should be reserved for patients unable to take oral medication or in emergency situations.

The usual daily dosages for antihypertensive and diuretic effect are roughly comparable as well as the oral and parenteral dosages.

	Diuretic	Antihypertensive	Pediatric
Chlorothiazide	0.5 to 2 Gm.	0.5 to 2 Gm.	Under 6 months: 10 to 15 mg./lb/day.
Hydrochlorothiazide.	25 to 200 mg.	25 to 100 mg.	Under 6 months: 1 to 1.5 mg./lb/day.
Hydroflumethiazide.	25 to 200 mg.	50 to 100 mg.	
Bendroflumethiazide.	2.5 to 20 mg.	2.5 to 20 mg.	
Benzthiazide	50 to 200 mg.	50 to 200 mg.	
Polythiazide	1 to 4 mg.	2 to 4 mg.	
Trichlormethiazide.	1 to 4 mg.	2 to 4 mg.	
Methychlothiazide.	2.5 to 10 mg.	2.5 to 10 mg.	

3. *Marketing status.* Marketing of such drugs may be continued under the conditions described in the notice entitled "Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study" published in the FEDERAL REGISTER July 14, 1970 (35 F.R. 11273), as follows:

a. For holders of "deemed approved" new drug applications (i.e., an application which became effective on the basis of safety prior to Oct. 10, 1962), the submission of a supplement for revised labeling, an abbreviated supplement for updating information, and adequate data to show the biologic availability of the drug in the formulation which is marketed as described in paragraphs (a) (1) (i), (ii), and (iii) of the notice of July 14, 1970. Clinical trials which have established effectiveness of the drug may also serve to establish the bioavailability of the drug if such trials were conducted on the currently marketed formulation.

b. For any person who does not hold an approved or effective new drug application, the submission of an abbreviated new drug application, to include adequate data to assure the biologic availability of the drug in the formulation which is or is intended to be marketed, as described in paragraph (a) (3) (ii) of that notice.

c. For any distributor of the drug, the use of labeling in accord with this announcement for any such drug shipped within the jurisdiction of the Act as described in paragraph (b) of that notice.

d. For indications for which the drug has been classified as probably effective (included in the "Indications" section above), and possibly effective (not included in the "Indications" section above), continued use as described in paragraphs (c), (d), (e), and (f) of that notice.

C. *Opportunity for a hearing.* 1. The Commissioner of Food and Drugs proposes to issue an order under the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of all new drug applications and all amendments and supplements thereto providing for the indications for which substantial evidence of effectiveness is lacking as described in paragraph A of this announcement. An order withdrawing approval of the applications will not issue if such applications are supplemented, in accord with this notice, to delete such indications. Any related drug for human use, not the subject of an approved new drug application offered for the indications for which substantial evidence of effectiveness is lacking may be affected by this action.

2. In accordance with the provisions of section 505 of the Act (21 U.S.C. 355), and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner will give the holders of any such applications, and any interested person who would be adversely affected by such an order, an opportunity for a hearing to show why such indications should not be deleted from labeling. A request for a hearing must be filed within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

3. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing, together with a well-organized and full factual analysis of the clinical and other investigational data that the objector is prepared to prove in a hearing. Any data submitted in response to this notice must be previously unsubmitted and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a) (5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

4. If a hearing is requested and is justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence.

A copy of the Academy's report has been furnished to each firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 11145, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

Request for Hearing (identify with Docket Number): Hearing Clerk, Office of General Counsel (GC-1), Room 6-88, Parklawn Building.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD-67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

Received requests for a hearing may be seen in the office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 29, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-11521 Filed 7-25-72;8:46 am]

[DESI 11234]

COMBINATION DRUG CONTAINING QUINACRINE HYDROCHLORIDE, CHLOROQUINE PHOSPHATE, AND HYDROXYCHLOROQUINE SULFATE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drug:

Triquin tablets containing quinacrine hydrochloride, chloroquine phosphate, and hydroxychloroquine sulfate; formerly marketed by Winthrop Laboratories, 90 Park Avenue, New York, NY 10016 (NDA 11-234).

The Food and Drug Administration has considered the Academy's report, as well as other available evidence, and concludes that there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that this fixed combination drug will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling and that each component of such drug contributes to the total effects claimed.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above-listed new drug application. Any related drug for human use, not the subject of an approved new drug application, may be affected by this action.

Prior to initiating such action, however, the Commissioner invites the holder of the new drug application for this drug and any interested person who might be adversely affected by its removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER.

To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well organized, and include data from adequate and well controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

The above-named holder of the new drug application for this drug has been mailed a copy of the NAS-NRC report. Communications forwarded in response to this announcement should be identified with the reference number DESI 11234, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Requests for the Academy's report: Drug Efficacy Study Information Control (BD-67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 30, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-11522 Filed 7-25-72;8:46 am]

[DESI 5743]

SODIUM FLUORIDE, ASCORBIC ACID, AND ERGOCALCIFEROL LOZENGE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drug:

Enziflur Lozenges containing sodium fluoride, ascorbic acid, and ergocalciferol; Ayerst Laboratories, 685 Third Avenue, New York, N.Y. 10017 (NDA 5-743).

The Food and Drug Administration has considered the Academy's report, as well as other available evidence, and concludes that there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that this drug will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling and that each component of the combination drug contributes to the total effects claimed for the drug.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the new drug application listed above. Any related drug for human use, not the subject of an approved new drug application, may be affected by this action.

Prior to initiating such action, however, the Commissioner invites the holder of the new drug application for this drug and any interested person who might be adversely affected by its removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER.

To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well organized, and include data from adequate and well controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

A copy of the Academy's report has been furnished to the firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 5743, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Requests for the Academy's report: Drug Efficacy Study Information Control (BD-67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 29, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-11520 Filed 7-25-72;8:46 am]

[DESI 3523]

CERTAIN COMBINATION DRUGS CONTAINING XANTHINE DERIVATIVES

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

1. Deltasmyl tablets containing theophylline, ephedrine hydrochloride, prednisone, and phenobarbital; Roussel Corp., 155 East 44th Street, New York, N.Y. 10017 (NDA 11-314).

2. Hydryllin tablets and elixir containing diphenhydramine and aminophylline; G. D. Searle and Co., Post Office Box 5110, Chicago, Ill. 60680 (NDA 6-257).

3. Nethaprin Capsules and Syrup (2 reports) containing etafedrine hydrochloride, ambuphylline, and doxylamine succinate; Merrell-National Laboratories, Div. of Richardson-Merrell, Inc., 110 East Amity Road, Cincinnati, Ohio 45215 (NDA 6-821).

4. Asminyl H-F Tablets containing sodium phenobarbital, ephedrine sulfate, chlorpheniramine maleate, and theophylline; Cole Pharmacal Co., Inc., 3721 Laclede Avenue, St. Louis, Mo. 63108 (NDA 3-523).

The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and

concludes that there is a lack of substantial evidence within the meaning of the Federal Food, Drug, and Cosmetic Act that these combination drugs, as presently formulated, will have the effects that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling, or that each component of the combination drug contributes to the total effects claimed for the drug.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above listed new drug applications. Any related drug for human use, not the subject of an approved new drug application, may be affected by this action.

Prior to initiating such action, however, the Commissioner invites the holders of the new drug applications for such drugs, and any interested persons who might be adversely affected by their removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER.

To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12 (a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

The above-named holders of the new drug applications for these drugs have been mailed a copy of the Academy's reports. Communications forwarded in response to this announcement should be identified with the reference number DESI 3523, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Requests for Academy's reports: Drug Efficacy Study Information Control (BD-67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 30, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-11519 Filed 7-25-72;8:46 am]

[FAP 2M2815]

PPG INDUSTRIES, INC.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2M2815) has been filed by PPG Industries, Inc., Drawer A, Delaware, Ohio 43015 proposing the issuance of a food additive regulation (21 CFR Part 121) to provide for the safe use in contact with food of an electron-beam cured coating, prepared with spermaceti wax, acrylic acid, butyl acrylate, ethyl acrylate, hydroxyethyl acrylate, methacrylic acid, methyl methacrylate, and pentaerythritol tetraacrylate.

Dated: July 17, 1972.

VIRGIL O. WOODICKA,
Director, Bureau of Foods.

[FR Doc.72-11523 Filed 7-25-72;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-250]

FLORIDA POWER & LIGHT CO.

Notice of Issuance of Facility Operating License

Notice is hereby given that the Atomic Energy Commission (the Commission) has issued Facility Operating License No. DPR-31 to Florida Power & Light Co. (the licensee) which authorizes the licensee to operate the Turkey Point Nuclear Generating Unit No. 2, at steady state power levels not in excess of 2,200 megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications appended thereto. The Notice of AEC Consideration of Issuance of Facility Operating License was published in the FEDERAL REGISTER on October 30, 1971 (36 F.R. 20906). The Turkey Point Nuclear Generating Unit No. 3 is a pressurized water nuclear reactor located at the licensee's site in Dade County, Fla.

A Notice of Hearing on this facility was published by the Commission in the FEDERAL REGISTER on April 4, 1972 (37 F.R. 6777). The notice indicated that an Atomic Safety and Licensing Board (Board) would be designated by the Commission to conduct the hearing, provided for intervention by Paul Siegel, and provided an opportunity to make limited appearances to other persons who wished to make a statement in the proceeding but who did not wish to intervene. The Notice of Hearing also provided that the issue for hearing consideration would be the steam line safety valve header failure of December 2, 1971, as refined through appropriate prehearing procedure, and that, depending on the resolution thereof, authorization for issuance of the license might be granted or denied, or that the license might be authorized as appropriately conditioned. The Notice of Hearing further provided that an operating license would be issued only after appropriate findings had been made by the Director of Regulation on certain specified matters not embraced by the Board's decision.

On July 10, 1972, after a public hearing held pursuant to the Notice of Hearing, the Board issued an "Order Resolving Issue Prescribed for Consideration" which set forth the Board's conclusion that "the safety valve header system as now constructed and tested can be operated without undue risk to the health and safety of the public".

The Commission's regulatory staff has inspected the facility and has determined that for operation as authorized by this license, the facility has been constructed in accordance with the application, as amended, the provisions of Provisional Construction Permit No. CPPR-27, the Atomic Energy Act of 1954, as amended, and the Commission's regulations. The licensee has submitted proof of financial protection in satisfaction of the requirement of 10 CFR Part 140.

In accordance with the Notice of Hearing, the Director of Regulation has made the findings which are set forth in the license, and has concluded that the application, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Chapter 1, and that the issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

The Director of Regulation has also concluded that postponement of the issuance of this license until thirty (30) days after the final detailed statement on environmental considerations was made available to the public, is impracticable.

The license is effective as of the date of issuance and shall expire on April 27, 2007, unless extended for good cause shown or upon the earlier issuance of a superseding operating license.

A copy of (1) Facility Operating License No. DPR-31, complete with Technical Specifications, (2) the applicant's Environmental Report dated November 15, 1970, and supplements thereto, dated April 4, 1971, November 8, 1971, and March 16, 1972, respectively, (3) the report of the Advisory Committee on Reactor Safeguards, dated June 18, 1971, (4) the "Safety Evaluation by the Division of Reactor Licensing (now the Directorate of Licensing), U.S. Atomic Energy Commission, in the matter of the Florida Power & Light Co., Turkey Point Plant, Units 3 and 4," dated March 15, 1972, (5) the Final Safety Analysis Report and amendments thereto, (6) the Draft Statement on Environmental Considerations dated February 11, 1972, and (7) the Final Detailed Environmental Statement dated July 1972, are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Copies of these documents will also be made available at the Lily Lawrence Row Public Library, 212 Northwest First

Avenue, Homestead, FL 33030, for inspection by members of the public between the hours of 10 a.m. to 8 p.m. on Monday and 10 a.m. to 5:30 p.m. on Tuesday through Saturday. Copies of items (1), (4), (6), and (7) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 19th day of July 1972.

For the Atomic Energy Commission.

R. C. DEYOUNG,
Assistant Director for Pressurized Water Reactors, Directorate of Licensing.

[FR Doc.72-11510 Filed 7-25-72;8:45 am]

[Dockets Nos. 50-250, 50-251]

FLORIDA POWER & LIGHT CO. (TURKEY POINT NUCLEAR GENERATING UNITS 3 AND 4)

Notice of Reappointment of Appeal Board Chairman

The Commission has delegated its authority and review function in this proceeding to the Atomic Safety and Licensing Appeal Board. (37 F.R. 6777, April 4, 1972.) During the course of this proceeding, the Appeal Board has consisted of the then Chairman and the present Vice Chairman of the Board (Algie A. Wells, Esq., and Dr. John H. Buck) and a third member (Dr. Lawrence R. Quarles) designated by the Commission. Subsequently, Mr. Wells retired from Government service, and thus from his position of Appeal Board Chairman.

In accordance with § 2.787 of the rules of practice, 10 CFR Part 2, the Commission has designated Algie A. Wells, Esq., to continue as Chairman of the Appeal Board for purposes of this proceeding.

It is so ordered.

Dated: July 18, 1972.

U.S. Atomic Energy Commission.

W. B. McCOOL,
Secretary of the Commission.

[FR Doc.72-11509 Filed 7-25-72;8:45 am]

[Docket No. 50-382]

LOUISIANA POWER & LIGHT CO.

Notice of Availability of Applicant's Revised Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a report entitled "Applicant's Environmental Report-Construction Permit Stage," dated February 24, 1972 ("the report") for the Waterford Steam Electric Station, Unit 3, submitted by the Louisiana Power & Light Co., has been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the St. Charles Parish Library, Hahnville, La. 70057. The report is also being made available at the Commission on Intergovernmental Relations, Post Office Box 44316, Baton Rouge, LA 70804, and at the Secretary of the Teche District Clearinghouse, County Agent, Convent Courthouse, Convent, La. 70723.

The report discusses environmental considerations related to the proposed construction of the Waterford Steam Electric Station, Unit No. 3 (plans have been canceled for Unit No. 4) located on the company's site on the west bank of the Mississippi River near the town of Taft in St. Charles Parish, about 20 miles west of New Orleans, La. This report supersedes the Environmental Report submitted on January 15, 1971, in its entirety.

After the report has been analyzed by the Commission's Directorate of Licensing, a Draft Environmental Statement related to the proposed action will be prepared. Upon preparation of the Draft Environmental Statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the Draft Environmental Statement. The summary notice will request comments from interested persons on the proposed action and on the Draft Environmental Statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 17th day of July 1972.

For the Atomic Energy Commission.

R. C. DEYOUNG,
Assistant Director for Pressurized Water Reactors, Directorate of Licensing.

[FR Doc.72-11511 Filed 7-25-72;8:45 am]

[Docket No. 50-193]

RHODE ISLAND AND PROVIDENCE PLANTATIONS ATOMIC ENERGY COMMISSION

Notice of Issuance of Facility License Amendment

The Atomic Energy Commission ("the Commission") has issued, effective as of the date of issuance, Amendment No. 3 to Facility License No. R-95. The license authorizes the Rhode Island and Providence Plantations Atomic Energy Commission (RIPPAEC) to possess, use, and operate the Rhode Island Nuclear Science Center Reactor located at Fort Kearney in Narragansett, R.I., at power levels up to 2 megawatts (thermal). The amendment authorizes an increase from 7.5 to 10 kilograms in the quantity of contained uranium-235 which the RIPPAEC may receive, possess, and use in connection with operation of the reactor, in accordance with RIPPAEC's application dated June 20, 1972.

The additional quantity of material allows fuel elements to be replaced in the existing core as required to maintain adequate excess reactivity for full power operation, while achieving the maximum possible burnup in each element before it is removed from service and permitting the receipt and return of full cores rather than partial cores. It will be stored and utilized in accordance with the license and the existing technical specifications.

The Commission has found that the application for the amendment complies with the provisions of the Atomic Energy Act of 1954, as amended ("the Act"), and the Commission's regulations published in 10 CFR Chapter I, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission also has found that prior public notice of proposed issuance of this license amendment is not required since the operation of the facility in accordance with the terms of the license, as amended, does not involve significant hazards considerations different from those previously evaluated.

Within 15 days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated June 20, 1972, and (2) Amendment No. 3 to the facility license, both of which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. A copy of item (2) may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 14th day of July 1972.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Operating Reactors, Directorate of Licensing.

[FR Doc.72-11512 Filed 7-25-72;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24518]

CESKOSLOVENSKE AEROLINIE

Notice of Hearing Regarding Renewal of Foreign Air Carrier Permit

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the

above-entitled matter is assigned to be held on August 16, 1972, at 10 a.m., local time, in Room 726, 1825 Connecticut Avenue NW., Universal Building, Washington, DC, before the undersigned Examiner.

Dated at Washington, D.C., on July 20, 1972.

[SEAL] JAMES S. KEITH,
Hearing Examiner.

[FR Doc.72-11575 Filed 7-25-72;8:50 am]

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST

Notice of Proposed Addition to Initial List

Notice is hereby given pursuant to section 2(a)(2) of the Act to Create a Committee on Purchases of Blind-Made Products, as amended, 85 Stat. 79, of the proposed addition of the following commodities and services to the Initial Procurement List published on pages 16982 through 16997 of the FEDERAL REGISTER of August 26, 1971.

Class 1210:
Fire control instrument covers.
Class 1230:
Fire control instrument covers.
Class 1680:
Windshield wipers, parts and assemblies (aircraft ground servicing equipment).
Class 1730:
Stands and supports (marine hardware and hull items).
Class 2040:
Oars and oarlocks.
Rope cleats (vehicular furniture and accessories).
Class 2540:
Mirrors and assemblies.
Windshield wipers, parts and assemblies (miscellaneous engine accessories, nonaircraft).
Class 2990:
Starter ropes (sets, kits and outfits of hand tools).
Class 5120:
Key, socket head screw and key sets (Allen-type).
Hexagon and spline head.
Hex wrench (complete series).
Series wrenches (Allen), 5120-080-9288.
8 wrenches (Allen), 5120-027-2051.
10 short series wrenches (Allen), 5120-203-7064.
8 short series wrenches (Allen), 5120-684-7055.
Class 5180:
Air conditioner tool kits.
Aircraft maintenance and repair kits and sets.
Alternator, battery and generator tool kits and sets.
Automotive mechanic tool kits and sets.
Brake maintenance tool kits.
Clamp tool kits, hose fabricator and repair.
Wire crimping tool kits and sets.
Electrical and electronics tool kits and sets.
Brazing and welding tool kits.
Tool kits, bricklayer, mason and concrete workers.
Tool kits, fabric and leather workers.
Tool kits, gas and electric appliance repair.
Tool kits, office machine repair.
Tool kits, painters and glazers.
Tool kits, optical repair.
Class 5310:
Washer assortment, 5310-209-2312.
Class 5315:
Cotter pin assortment, 5315-598-5916.
Class 6515:
Nonpneumatic tourniquet, 6515-766-9396.
Adapter, oxygen flow-control assembly, 6515-369-7351.
Quick diss connection, 6515-369-7331.
Various assemblies, 6515-369-7346.
Various assemblies, 6515-369-7344.
Various assemblies, 6515-369-7342.
Various assemblies, 6515-369-7343.
Various assemblies, 6515-369-7330.
Various assemblies, 6515-369-7336.
Class 6530:
Bracelet tag, 6530-451-2644.
Necklace type, 6530-852-4749.
Cover 12 x 12, 6530-926-4902.
Cover 18 x 18, 6530-926-4903.
Cover 24 x 24, 6530-926-4904.
Cover 36 x 36, 6530-926-4905.
Cover 48 x 48, 6530-850-8612.
Cover 54 x 54, 6530-850-8613.
Cover 54 x 76, 6530-850-8614.
Class 6532:
Scrub dress—Large, 6532-044-3756.
Scrub dress—Medium, 6532-044-3754.
Scrub dress—Large, 6532-900-9334.
Scrub dress—Medium, 6532-900-9333.
Convalescent jacket, 6532-299-8076.
Convalescent patient shirt, long sleeves, Extra-Large, 6532-732-600.
Convalescent patient shirt, long sleeves, Large, 6532-732-610.
Convalescent patient shirt, long sleeves, Medium, 6532-732-620.
Convalescent patient shirt, long sleeves, Medium Large, 6532-732-630.
Convalescent patient shirt, long sleeves, Small, 6532-732-640.
Convalescent patient shirt, quarter-length sleeves:
Extra-Large, 6532-732-660.
Large, 6532-732-670.
Medium, 6532-732-680.
Medium Large, 6532-732-690.
Small, 6532-732-700.
Operating surgical shirt—Large, 6532-236-0285.
Operating surgical shirt—Medium, 6532-236-0299.
Operating surgical shirt—Small, 6532-236-0314.
Convalescent patient trousers, 6532-299-8087.
Convalescent patient trousers, Extra-Large, 6532-724-1854.
Convalescent patient trousers, Large, 6532-724-5310.
Convalescent patient trousers, Medium, 6532-724-5312.
Operating trousers—Large, 6532-490-9846.
Operating trousers—Medium, 6532-490-9847.
Class 6545:
Surgical dressing set; Assembly of various small—Items and sterile.
Class 7240:
Holder, garbage can, 7240-482-6626.
Class 7340:
Fork, wood, 7340-290-2884.
Fork, cocktail, 7340-823-7204.
Fork, dessert, 7340-721-6971.
Fork, salad, 7340-823-7203.
Fork, table, 7340-634-2844.
Fork, table, 7340-241-8169.
Knife, table, 7340-634-2867.

Knife, table, 7340-241-8170.
Spoon, Bouillon, 7340-688-1055.
Spoon, dessert, 7340-634-2863.
Spoon, table, 7340-241-8171.
Class 7350:
Dispenser, paper napkin, 7350-205-0928.
Class 7510:
Pencils, drawing, colored, thin lead, hexagonal, with eraser.
Class 7520:
Fingerprint identification kit, 7520-286-1721.
Print-taking kit with case (8 components), 7520-275-8078.
Iodine fuming kit, 7520-275-8077.
Criminal investigating kit, 7520-753-4703.
Lecture pointers.
Marker, tube type, three-color set, 7520-558-1501.
Pencil, mechanical, china-marking, 7520-557-4570.
Class 7530:
Folder, file, manila, 7530-273-9845.
Class 7920:
Scraper and squeegee (Combination automotive windshield ice scraper and rubber squeegee), 7920-045-2556.
Brush, scrub, household 2¾ x 10¾" white tampico fiber, 7920-282-2470.
Class 8465:
Bag, soiled clothers, submarine, 8465-762-7671.
Case, maintenance equipment, small arms M16A1, 8465-781-9564.
Case, small arms, ammunition, nylon M16 rifle, 8465-935-6780.
Class 9905:
Reflector kit, indicating clearance, 9905-563-7268.
Reflector kit and flag warning kit, 9905-534-8376.
Miscellaneous Item:
Belts, passenger (aircraft).
Services:
Furniture Repair:
Alaska—Fairbanks.
Texas—San Antonio.
Janitorial Services:
Florida—Miami.
Mailing Service:
Connecticut—Uncasville.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed addition may be filed with the Committee. Communications should be addressed to the Executive Director, Committee for Purchase of Products and Services of the Blind and other Severely Handicapped, 1511 K Street NW., Washington, DC 20005.

By the Committee.

CHARLES W. FLETCHER,
Executive Director.

[FR Doc.72-11342 Filed 7-25-72;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

CHEMAGRO CORP.

Notice of Amended Filing of Petition Regarding Pesticide Chemical

Notice was given in the FEDERAL REGISTER of February 10, 1971 (36 F.R. 2822), that a petition (PP 1F1063) had been filed by Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, proposing establishment of tolerances (40 CFR Part 180) for residues of the fungicide and insecticide 6-methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate in or on the following raw agricultural commodities:

Almond hulls at 10 parts per million; strawberries at 6 parts per million; papayas at 5 parts per million; apricots, nectarines, and peaches from preharvest and postharvest application at 4 parts per million; cherries at 3 parts per million; citrus fruits and grapes at 2.5 parts per million; apples, cantaloupes, honeydew melons, muskmelons, pears, and summer squash at 1.5 parts per million; plums at 1 part per million; cucumbers, watermelons, and winter squash at 0.75 part per million; almonds, avocados, macadamia nuts, and walnuts at 0.1 part per million.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that said petition has been amended by withdrawing the request for tolerances in or on all the raw agricultural commodities except 0.1 part per million in or on walnuts and macadamia nuts and 0.5 part per million in or on citrus.

Dated: July 18, 1972.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-11514 Filed 7-25-72;8:45 am]

CHEMAGRO CORP.

Notice of Withdrawal of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, has withdrawn its petition (FAP 1H2622), notice of which was published in the FEDERAL REGISTER of February 10, 1971 (36 F.R. 2822), proposing establishment of food additive tolerances (21 CFR Part 121) of 9 parts per million in raisins and 4 parts per million in dried prunes for residues of the fungicide and insecticide 6-methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate resulting from carryover and concentration after application to the growing grapes and plums.

Dated: July 18, 1972.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-11515 Filed 7-25-72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CABLE TV GOVERNMENT ADVISORY GROUP

Notice of Place and Dates of Meetings

JULY 20, 1972.

The Steering Committee of the Cable Television Federal-State/local Advisory Committee will meet August 1, 2, 15, and 16, 1972, 10 a.m. in Room 847S at the FCC, 1919 M Street NW., Washington, DC.

The format for the meetings includes special presentations by guest speakers on Federal-State/local relationships, a question and answer session between the Steering Commitee and the speakers followed by a general discussion. The Steering Committee will also take up a series of urgent issues concerned with Federal-State/local relationships.

The Committee was organized, following adoption of new cable TV rules, to aid in resolving major matters involving governmental relationships, such as franchising procedures, service, interconnection and rates to subscribers.

Chairman Dean Burch is chairman of the advisory committee and Cable TV Bureau Chief Sol Schildhause, vice-chairman. The group's first organizational meeting was held in Chicago on May 15, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-11552 Filed 7-25-72;8:50 am]

FEDERAL MARITIME COMMISSION

AMERICAN WEST AFRICAN FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

John K. Cunningham, Chairman, American West African Freight Conference, 67 Broad Street, New York, NY 10004.

Agreement No. 7680-32, among the member lines of the American West African Freight Conference modifies the basic agreement by deleting therefrom the existing subparagraph (c) of Article 10 and the whole of Article 15 and substituting therefor new language which: (1) Defines the nature and meaning of votes in a conference meeting; and (2) institutes a special procedure to govern the establishment of eastbound rates applicable to the transportation of commodities shipped by the Government of Canada or any agency or department thereof.

Dated: July 21, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-11568 Filed 7-25-72;8:49 am]

[Docket No. 72-31]

ATLANTIC LINES, LTD.

Order of Investigation and Suspension Regarding General Increase in Rates in U.S. Atlantic/Gulf to Virgin Islands Trade

Atlantic Lines, Ltd. (Atlantic), filed with the Federal Maritime Commission, 30 various revised pages to its Tariff FMC-F No. 5, to become effective July 19, 1972. Atlantic proposes to increase its any quantity (AQ) rates by an average of 15 percent and its container/trailerload rates from 7 to 21 percent for an average estimated 18 percent overall increase.

Upon consideration of said pages the Commission is of the opinion that the above designated tariff matter may be unjust, unreasonable, or otherwise unlawful and that a public investigation and hearing should be instituted to determine its lawfulness under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933.

The financial data which Atlantic has submitted in support of its proposed general increase indicates that the carrier will realize a return of more than 200 percent after taxes on its reported rate base for the first full year that the rate increase is allowed to become effective; therefore:

It is ordered, That pursuant to the authority of section 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of said increased rates and charges with a view to making such findings and orders in the premises as the facts and circumstances warrant. In the event the matter hereby placed under investigation is further changed, amended or reissued, such matter will be included in this investigation;

It is further ordered, That pursuant to section 3, Intercoastal Shipping Act, 1933, revised pages 20 through 39 with the exceptions of pages 30B and 35 are hereby suspended and the use thereof deferred to and including November 18, 1972, unless otherwise ordered by this Commission;

It is further ordered, That there shall be filed immediately with the Commission by Atlantic Lines, Ltd., a consecutively numbered supplement to the aforesaid tariff which supplement shall bear no effective date, shall reproduce the portion of this order wherein the suspended matter is described and shall state the aforesaid matter is suspended and may not be used until November 19, 1972, unless otherwise authorized by the Commission; and the rates and charges heretofore in effect, and which were to be changed by the suspended matter shall remain in effect during the period of suspension, except as hereinbefore provided, and neither the matter suspended, nor the matter which is continued in effect as a result of such suspension may be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission: *Provided, however,* That changes in rates and provisions held in effect by reasons of suspension in this docket but only to the extent that such changes will result in a reduction in rates or charges, upon lawful notice, are hereby authorized.

It is further ordered, That the granted authority to effect reduction in rates on charges does not prejudice the right of the Commission to suspend any publication submitted pursuant thereto, either upon receipt of protests or upon the Commission's own motion, and that publications issued and filed pursuant to such authority shall bear the notation: "Authority granted by the Federal Maritime Commission in its Order of Investigation and Suspension in Docket No. 72-31 to make changes in rates and provisions held in effect by reason of suspension in said Docket, but only to the extent that such departure will result in a reduction of rates or charges."

It is further ordered, That copies of this order shall be filed with the said tariff schedules in the Bureau of Compliance of the Federal Maritime Commission;

It is further ordered, That the provisions of Rule 12 of the Commission's rules of practice and procedure which require leave of the Commission to take testimony by deposition or by written interrogatory if notice thereof is served within 20 days of the commencement of the proceeding, are hereby waived for this proceeding inasmuch as the expeditious conduct of business so requires. The provision of Rule 12(h) which requires leave of the Commission to request admissions of fact and genuineness of documents if notice thereof is served within 10 days of commencement of the proceeding, is similarly waived;

It is further ordered, That Atlantic Lines, Ltd., be named as respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and a place to be determined and announced by the presiding examiner;

It is further ordered, That (1) a copy of this order shall forthwith be served on the respondent herein and published in the FEDERAL REGISTER; and (2) the said respondent be duly served with notice of time and place of hearing.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of Commission promptly and file petitions for leave to intervene in accordance with Rule 5(1) of the Commission's rules of practice and procedure (46

CFR 502.72) with a copy to all parties to this proceeding.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-11569 Filed 7-25-72;8:49 am]

RICHARD DIAZ, ET AL.

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Richard Diaz, 836 Granada Grove Court, Coral Gables, FL 33134.

Timothy O. Hannon, doing business as Timothy O. Hannon & Co., 9801 West Lawrence Avenue, Schiller Park, IL 60176.

Gonzalo Garcia, doing business as Atlas International, 7700 Northwest 54th Street, Miami, FL 33166.

Southard Moving & Storage Co., 315 South Court Street, Rockford, IL 61105.

OFFICERS

Harold L. Southard, President.
Dorothy Southard, Secretary.
Charles E. Shepard, Vice President.

Dated: July 21, 1972.

By the Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-11574 Filed 7-25-72;8:50 am]

[Docket No. 72-33; FMC License 150]

JOHN S. JAMES AND JOHN S. JAMES, INC. OF ATLANTA

Order To Show Cause Regarding Possible Suspension or Revocation of Independent Ocean Freight Forwarder License

On or about March 1, 1972, the Office of Freight Forwarders, Bureau of Certification and Licensing, of the Federal Maritime Commission, circulated to all licensed independent ocean freight forwarders a request to furnish certain factual information. Response was requested on or before March 30, 1972. That request advised all forwarders that failure to respond to the Commission's lawful inquiries might result in revocation or suspension of the license pursuant to § 510.9(b) of the Commission's General Order 4.

On April 25, 1972, an additional notice again requesting production of the same information was sent to all forwarders who had failed to respond to the earlier request of March 1, 1972. These notices were sent by U.S. Certified Mail, Return Receipt Requested, and allowed 20 days from receipt for the furnishing of the information requested. The notice further stated:

Failure to comply within the 20-day period may result in a recommendation that the Commission institute a formal proceeding requiring that your company show cause why your license should not be suspended or revoked for failure to respond to this inquiry.

John S. James, Inc. of Atlanta, FMC License No. 150, was one of those to whom the notice of April 25, 1972, was sent. Despite the fact that evidence of delivery to John S. James, Inc. has been secured by the return of a signed postal receipt, such forwarder has not responded to the request for information contained in the notices sent to it.

This failure to respond to the foregoing request appears to be in violation of § 510.5(c) of the Commission's General Order 4 which provides that freight forwarders shall submit information required by the Commission. Section 510.9 (b) provides that a freight forwarder license may be suspended or revoked for failure to respond to any lawful inquiries of the Commission.

Now, therefore it is ordered, That pursuant to section 44 and section 22 of the Shipping Act, 1916, John S. James, Inc. of Atlanta, FMC License No. 150 is hereby made respondent in this proceeding and is directed to show cause why it should not have its license as an independent ocean freight forwarder suspended or revoked pursuant to § 510.9(b) because of its failure to comply with § 510.5(c) of General Order 4.

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memorandum of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party may accompany such a request for hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Request for hearing shall be filed on or before August 11, 1972. Affidavits of fact and memorandum of law shall be filed by respondents and served upon all parties no later than the close of business August 11, 1972. Reply affidavits and memorandum shall be filed by the Commission's Bureau of Hearing Counsel and Intervenors, if any, no later than the close of business August 25, 1972. Oral argument will be scheduled at a later date if requested and/or deemed necessary by the Commission.

It is further ordered, That a notice of the Order be published in the FEDERAL REGISTER and that a copy thereof be served upon the respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein, shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72).

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-11571 Filed 7-25-72;8:50 am]

[Docket No. 72-32; FMC License 374]

MARION SHIPPING CO., INC.

Order To Show Cause Regarding Possible Suspension or Revocation of Independent Ocean Freight Forwarder License

On or about March 1, 1972, the Office of Freight Forwarders, Bureau of Certification & Licensing, of the Federal Maritime Commission, circulated to all licensed independent ocean freight forwarders a request to furnish certain factual information. Response was requested on or before March 30, 1972. That request advised all forwarders that failure to respond to the Commission's lawful inquiries might result in revocation or suspension of the license pursuant to § 510.9(b) of the Commission's General Order 4.

On April 25, 1972, an additional notice again requesting production of the same information was sent to all forwarders who had failed to respond to the earlier request of March 1, 1972. These notices were sent by U.S. Certified Mail, Return Receipt Requested, and allowed 20 days from receipt for the furnishing of the information requested. The notice further stated:

Failure to comply within the 20-day period may result in a recommendation that the Commission institute a formal proceeding requiring that your company show cause why your license should not be suspended or revoked for failure to respond to this inquiry.

Marion Shipping Co., Inc., FMC license No. 374, was one of those to whom the notice of April 25, 1972 was sent. Despite the fact that evidence of delivery to Marion Shipping Co., Inc. has been secured by the return of a signed postal receipt, such forwarder has not responded to the request for information contained in the notices sent to it.

This failure to respond to the foregoing request appears to be in violation of § 510.5(c) of the Commission's General Order 4 which provides that freight forwarders shall submit information required by the Commission. Section 510.9 (b) provides that a freight forwarder license may be suspended or revoked for failure to respond to any lawful inquiries of the Commission.

Now therefore it is ordered, That pursuant to section 44 and section 22 of the Shipping Act, 1916, Marion Shipping Co., Inc., FMC license No. 374 is hereby made respondent in this proceeding and is directed to show cause why it should not have its license as an independent ocean freight forwarder suspended or revoked pursuant to § 510.9(b) because of its failure to comply with § 510.5(c) of General Order 4.

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memorandum of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party may accompany such a request for hearing with a statement setting forth in deail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Request for hearing shall be filed on or before August 11, 1972. Affidavits of fact and memorandum of law shall be filed by respondents and served upon all parties no later than the close of business August 11, 1972. Reply affidavits and memorandum shall be filed by the Commission's Bureau of Hearing Counsel and Intervenors, if any, no later than the close of business August 25, 1972. Oral argument will be scheduled at a later date if requested and/or deemed necessary by the Commission.

It is further ordered, That a notice of the order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein, shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72).

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-11572 Filed 7-25-72;8:50 am]

[Docket No. 72-35]

PACIFIC WESTBOUND CONFERENCE

Order of Investigation Regarding Movement of Wastepaper and Woodpulp From United States West Coast Ports to Ports in Japan

The Pacific Westbound Conference (PWC), consisting of twenty-two (22) participating carriers and four (4) associate members, operates under Commission-approved Agreement No. 57 in the trade from U.S. Pacific Coast ports to ports in the Far East including ports in Japan, Korea, Taiwan, China, Hong Kong, Philippine Islands, Thailand, Cambodia, and Viet Nam.

The Commission is aware of the many potential benefits to be derived from increased recycling of our national solid waste through encouragement and development of existing or new ways and means for disposing of such waste. Wastepaper, for example, competes directly with virgin woodpulp both in the domestic and foreign trades and appears to be readily available for export from the United States at prices far lower than those charged for their virgin counterparts. However, the Commission has reason to believe that the rates charged by members of the PWC for transportation of wastepaper may preclude wastepaper from being competitive with virgin woodpulp.

Rates on woodpulp are "open" allowing each Conference member to set rates at a level consistent with and based upon their individual operating expenses, while rates on wastepaper are fixed under the dual rate system. This permits exporters of woodpulp whose rates are "open" to utilize the services of carriers having the lowest rates at the time of shipment, while exporters of wastepaper must exclusively use the Conference carriers at contract rates or refrain from signing the contract in order to use nonconference carriers.

Moreover, the Commission has reason to believe that although the PWC publishes no container load rates applicable to woodpulp or wastepaper, a significant portion of the movement of wastepaper may be in containers. Furthermore, rates on both woodpulp and wastepaper are on a weight basis related to the density of the specific shipment, which rates may have no relation to the comparative cost of transporting a loaded container of the lower valued wastepaper and a fully loaded container of woodpulp. The rate on wastepaper is $31.25 or $37 per long ton depending on density while the rate on woodpulp is between $14.50 and $32 per short ton, depending on the Conference carrier used. It is, therefore, questionable whether these rates have been established with proper regard to cost, value and other ratemaking factors.

Now therefore, it is ordered, Pursuant to sections 22, 15, 16, 17, and 18(b)(5) of the Shipping Act, 1916, that an investigation be instituted to determine whether the provisions of the Pacific Westbound Conference tariffs, and/or actions of its member lines pursuant thereto, related to the movement of wastepaper and woodpulp from U.S. west coast ports to ports in Japan: (1) Constitute unjust discrimination or unfair discrimination or unfair treatment as between carriers, shippers, or exporters or otherwise operate to the detriment of the commerce of the United States or are contrary to the public interest in violation of section 15 of the Act. (2) Make or give an undue or unreasonable advantage to any particular person, locality or description of traffic in any respect whatsoever, or subject any particular person, locality or description of traffic to any undue prejudice or disadvantage in any respect whatsoever in violation of section 16, First. (3) Result in charging or collecting rates or charges which are unjustly discriminatory between shippers contrary to section 17. (4) Result in rates or charges so unreasonably high or low as to be detrimental to the commerce of the United States contrary to section 18(b)(5).

It is further ordered, That in the event the rates, practices, rules or regulations of the Pacific Westbound Conference or actions of its member lines pursuant thereto as they relate to the aforesaid shipments are found to violate the provisions of the Shipping Act, 1916, the investigation shall determine what action would best ameliorate the condition.

It is further ordered, That the Pacific Westbound Conference and its member lines, as set forth below, be named as respondents in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and a place to be determined and announced by the Presiding Examiner;

It is further ordered, That: (1) a copy of this order shall forthwith be served on the respondents herein; (2) the said respondents be duly notified of the time and place of the hearing; and (3) this order be published in the FEDERAL REGISTER and notice of hearing be served upon respondents;

It is further ordered, That all persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72); and

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

PACIFIC WESTBOUND CONFERENCE

Mr. D. D. Day, Jr., Chairman, 635 Sacramento Street, San Francisco, CA 94111.

MEMBER LINES

American Mail Line, Ltd., 1010 Washington Building, Seattle, WA 98101.
American President Lines, Ltd., 601 California Street, San Francisco, CA 94108.
Barber Lines, A/S, Post Office Box 1330, Vika, Oslo, 1, Norway.
Japan Line, Ltd., Kokusai Building 12, 3, Marunouchi, Chiyoda-Ku, Tokyo, Japan, "Japan Line".
Kawasaki Kisen Kaisha, Ltd., 8 Kaigan-dori, Ikuta-Ku, Kobe, Japan.
Knutsen Line—
Dampskibsaktieselskapet Jeanette Skinner.
Skibsaktieselskapet Pacific.
Skibsaktieselskapet Mario Bakke.
Dampskibsaktieselskapet Golden Gate.
Dampskibsaktieselskapet Lisbeth.
Skibsaktieselskapet Ogeka.
Hvalfangstaktieselskapet Suderoy.
Knut Knutsen, O.A.S., Haugesund, Norway.
A. P. Moller-Maersk Line, a Joint Service of: Dampskibsselskabet AF 1912 Aktieselskab, Aktieselskabet Dampskibsselskabet Svenbof. Managed by: A. P. Moller, 8 Kongens Nytorv, Copenhagen K, Denmark.
Maritime Co. of the Philippines, 205 Juan Luna, Manila, Philippines.
Mitsui O.S.K. Lines, Ltd., 36 Hitotsugi-cho, Akasaka, Minato-ku, Post Office Box 6, Akasaka, Tokyo, Japan, "Mitsui O.S.K. Lines."
Nippon Yusen Kaisha, 20, 2-Chome, Marunouchi, Chiyoda-Ku, Tokyo, Japan, "N.Y.K. Line."
Pacific Far East Line, Inc., 141 Battery Street, San Francisco, CA 94111.
(I) Phoenix Container Liners, Ltd., Alexandra House, Hong Kong.

Sea-Land Service, Inc., Post Office Box 1050, Elizabeth, NJ 07207.
Seatrain International, S.A., 1395 Middle Harbor Road, Oakland, CA 94607.
Showa Shipping Co., Ltd. (Showa Kaiun Kaisha, Ltd.), Ida Building, No. 1 Yaesu 2-Chome, Chuo-ku, Tokyo, Japan, "Showa Line."
States Steamship Co., 320 California Street, San Francisco, CA 94104, "States Line."
Scindia Steam Navigation Co., Ltd., The, Scindia House, Ballard Estate, Bombay, 1 B.R. India.
Transportacion Maritima Mexicana, S.A., Av. De Los Insurgentes Sur No. 432 Tercer Piso, Mexico 7, D.F.
United Philippine Lines, United Philippines Building, Santa Clara, Intramuros, Manila, R.P.
United States Lines, Inc., 1 Broadway, New York, NY 10004.
Yamashita-Shinnihon Steamship Co., Ltd., Sixth Floor Palaceside Building, No. 1, Takehire-Cho, Chiyoda-Ku, Tokyo, Japan, "Yamashita-Shinnihon Line."
Zim Israel Navigation Co., Ltd. (Zim Container Service Division) (Zim American Israeli Shipping Co., Inc., General Agents), 7/9 Ha'atzmaut Road, Haifa, Israel.

ASSOCIATE MEMBERS

Peninsular and Oriental Steam Navigation Co., Beaufort House, 2 Gravel Lane, E. 1, London, England, "P & O Orient Lines."
Shipping Corp. of India, Ltd., Steelcrete House, Dinshaw Wache Road, Bombay 1, India.
States Marine Lines, States Marine International Inc., Globel Bulk Transport Inc., Isthmian Lines, Inc. (as one member only), 90 Broad Street, New York, NY 10004.
(C) (C) Waterman Steamship Co., Ltd., 140 Broadway, New York, NY 10005.

[FR Doc.72-11570 Filed 7-25-72;8:50 am]

[Docket No. 72-34; FMC License 779]

GERRY SCHMITT & CO.

Order To Show Cause Regarding Possible Suspension or Revocation of Independent Ocean Freight Forwarder License

On or about March 1, 1972, the Office of Freight Forwarders, Bureau of Certification & Licensing, of the Federal Maritime Commission, circulated to all licensed independent ocean freight forwarders a request to furnish certain factual information. Response was requested on or before March 30, 1972. That request advised all forwarders that failure to respond to the Commission's lawful inquiries might result in revocation or suspension of the license pursuant to § 510.9(b) of the Commission's General Order 4.

On April 25, 1972, an additional notice again requesting production of the same information was sent to all forwarders who had failed to respond to the earlier request of March 1, 1972. These notices were sent by U.S. Certified Mail, Return Receipt Requested, and allowed 20 days from receipt for the furnishing of the information requested. The notice further stated:

Failure to comply within the 20-day period may result in a recommendation that the Commission institute a formal proceeding requiring that your company show cause why your license should not be suspended or revoked for failure to respond to this inquiry.

Gerry Schmitt & Co., FMC License No. 779, was one of those to whom the notice of April 25, 1972 was sent. Despite the fact that evidence of delivery to Gerry Schmitt & Co. has been secured by the return of a signed postal receipt, such forwarder has not responded to the request for information contained in the notices sent to it.

This failure to respond to the foregoing request appears to be in violation of § 510.5(c) of the Commission's general order 4 which provides that freight forwarders shall submit information required by the Commission. Section 510.9 (b) provides that a freight forwarder license may be revoked or suspended for failure to respond to any lawful inquiries of the Commission.

Now, therefore, it is ordered, That pursuant to section 44 and section 22 of the Shipping Act, 1916, Gerry Schmitt & Co., FMC License No. 779 is hereby made respondent in this proceeding and is directed to show cause why it should not have its license as an independent ocean freight forwarder suspended or revoked pursuant to § 510.9(b) because of its failure to comply with § 510.5(c) of General Order 4.

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memorandum of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party may accompany such a request for hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues of this proceeding, and why such proof cannot be submitted through affidavit. Request for hearing shall be filed on or before August 11, 1972. Affidavits of fact and memorandum of law shall be filed by respondents and served upon all parties no later than the close of business August 11, 1972. Reply affidavits and memorandum of law shall be filed by the Commission's Bureau of Hearing Counsel and Intervenors, if any, no later than the close of business August 25, 1972. Oral argument will be scheduled at a later date if requested and/or deemed necessary by the Commission.

It is further ordered, That a notice of the order be published in the FEDERAL REGISTER and that a copy thereof be served upon the respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein, shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72).

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-11573 Filed 7-25-72;8:50 am]

FEDERAL POWER COMMISSION

[Docket No. CI73-39]

PENNZOIL PRODUCING CO.

Notice of Application

JULY 21, 1972.

Take notice that on July 14, 1972, Pennzoil Producing Co. (Applicant), 900 Southwest Tower, Houston, Tex. 77002, filed in Docket No. CI73-39 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) at an existing point of interconnection in Terrebonne Parish, La., all as more fully set forth in the application which is on file on the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to United on July 5, 1972, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell 300,000 Mcf of gas per month at 35 cents per Mcf at 15.025 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before August 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required,

further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-11563 Filed 7-25-72;8:49 am]

[Docket No. CI73-40]

PENNZOIL PRODUCING CO.

Notice of Application

JULY 21, 1972.

Take notice that on July 14, 1972, Pennzoil Producing Co. (Applicant), 900 Southwest Tower, Houston, TX 77002, filed in Docket No. CI73-40 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United), at an existing point of interconnection in Terrebonne Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to United on June 27, 1972, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell 180,000 Mcf of gas per month at 35.0 cents per Mcf at 15.025 p.s.i.a.

It appears reasonable and consistsent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before August 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-11564 Filed 7-25-72;8:49 am]

[Dockets Nos. CP71-305, CP71-306]

MICHIGAN CONSOLIDATED GAS CO. AND MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Petitions To Amend

JULY 18, 1972.

Take notice that on June 9, 1972, Michigan Consolidated Gas Co. (Consolidated), and Michigan Wisconsin Pipe Line Co. (Mich-Wis), 1 Woodward Avenue, Detroit, MI 48226, filed in Dockets Nos. CP71-305 and CP71-306, respectively, petitions to amend the order of the Commission heretofore issued in said dockets on September 10, 1971 (46 FPC ——), pursuant to sections 1(c) and 7(c) of the Natural Gas Act making certain declarations with regard to Consolidated's status under section 1(c) and by extending for an additional year the natural gas exchange therein authorized, all as more fully set forth in the petitions to amend on file with the Commission and open to public inspection.

By the order of September 10, 1971, the Commission authorized Mich-Wis to exchange natural gas with Consolidated on a best efforts basis until November 1, 1972; continued Consolidated's exempt status under section 1(c) of the Natural Gas Act; and declared that the transactions covered by the gas purchase contracts set forth in the appendix therein, the sellers thereunder and the gas provided to be sold and purchased thereunder, as well as future intrastate purchases of gas by Consolidated for intrastate sale and use were not subject to the Commission's jurisdiction under the Natural Gas Act by virtue of the exchange therein authorized. Under the authorization, Consolidated delivers volumes of natural gas produced in northern Michigan, in excess of the requirements of its northern system, to Mich-Wis at the latter's Hamilton and Traverse City, Mich., sales stations. Mich-Wis redelivers equivalent volumes to Consolidated's Southern system at the latter's Austin-Detroit sales station in Mecosta County, Mich. The exchange is necessary because Consolidated does not have facilities connecting its northern and southern systems Consolidated states that, it wishes to defer its plan, expressed in the subject order, to construct a pipeline connecting its northern and southern systems because of its inability to estimate the volumes of natural gas reserves that will be available to it in northern Michigan with sufficient certainty to enable it to determine the most efficient and economical size and location for the pipeline and because a large diameter pipeline with a view to future production is not necessary until 1973 due to the lack of completed processing facilities. For these reasons, Consolidated seeks an extension of the authorization in Commission's order in said dockets for 1 additional year pursuant to an agreement between Consolidated and Mich-Wis to extend their exchange agreement for the same period.

Consolidated states that by order of the Michigan Public Service Commission, Consumers Power Co. (Consumers), which is exempt from the provisions of the Natural Gas Act pursuant to section 1(c), and it are required to use jointly the "wet header system" currently being completed by Consolidated for gathering gas in the northern Michigan production area. By reason of the joint use, gas purchased by Consumers and gas purchased by Consolidated will be commingled in the wet header system thereby creating a situation under which the commingled stream delivered from the wet header system to Consolidated will or may contain gas purchased at wells by Consumers and vice versa. Consolidated states, however, that each company will receive volumes of gas from the wet header system proportional to those it delivers into that system and will have title to all gas delivered to it from the system. Thus, Consolidated will have title to all gas which it delivers to Mich-Wis for exchange, and it will have acquired all such gas in intrastate transactions.

Consolidated also states that the appendix to the order of September 10, 1971, is no longer current and should be replaced by the updated schedule of gas purchase contracts included in the appendix below to this notice.

In consideration of the proposed extension of the Commission's order, the transactions between Consolidated and Consumers, and the revision of the schedule of gas purchase contracts, Consolidated requests that the Commission issue an amending order:

1. Continuing its exempt status under section 1(c) of the Natural Gas Act in connection with the exchange agreement as extended;

2. Declaring that the transactions covered by the gas purchase contracts listed in the appendix below, the sellers thereunder, and the gas provided to be purchased and sold thereunder as well as future intrastate purchases of gas by Consolidated for intrastate sale and use, are not subject to the Commission's jurisdiction by virtue of the exchange agreement as extended; and

3. Declaring that the transactions between Consolidated and Consumers arising from the joint use of the wet header system are not subject to the Commission's jurisdiction by virtue of the exchange agreement as extended.

Any person desiring to be heard or to make any protest with reference to said petitions to amend should on or before August 4, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Name	Address	Date of contract	Counties
Pan American Petroleum Corp. (now Amoco Production Co.).	Post Office Box 3092, Houston, TX 77001.	Mar. 31, 1970	Grand Traverse, Kalkaska.
McClure Oil Co	1080 Bridge St., Post Office Box 147, Alma, MI 48801.	do	Grand Traverse.
North Michigan Land & Oil Corp. et al.[1]	110 Michigan Ave., Grayling, MI 49738.	June 25, 1970	Otsego.
Gulf Oil Corp	Post Office Box 1269, Jackson, Miss. 39205.	Aug. 21, 1970	Kalkaska.
Great Lakes Exploration Co. and the Glen Marshall No. 1, a limited partnership.	Post Office Box 101, Mount Pleasant MI 48858.	Feb. 23, 1971	Otsego.
H. R. Fruehauf, Jr	364 Provencal Road, Grosse Pointe Farms, MI 48236.	Mar. 15, 1971	Do.
Shell Oil Co	Post Office Box 2099, Houston, TX 77001.	Aug. 1, 1971	Otsego, Crawford, Antrim, Kalkaska, Grand Traverse, Wexford.
Amoco Production	Post Office Box 3092, Houston, TX 77001.	Feb. 10, 1972	Kalkaska, Grand Traverse.
Do	Post Office Box 3092, Houston, TX 77001.	Mar. 24, 1972	Kalkaska.
McClure Oil Co	1080 Bridge St. Alma, MI 48801	Mar. 27, 1972	Grand Traverse.

[1] Murell L. Welch, W. E. Hersee, Thomas B. Mask (Mount Pleasant, Mich.), Lud Segerlund (Harrison, Mich.), and Ray D. Markel (Clark Lake, Mich.).

[FR Doc.72-11546 Filed 7-25-72;8:48 am]

[Project No. 472-Idaho]

UTAH POWER & LIGHT CO.

Notice of Availability of Environmental Statement for Inspection

JULY 19, 1972.

Notice is hereby given that on June 29, 1971, as required by § 2.81(b) of Commission regulations under Order 415-B (36 F.R. 22738, November 30, 1971) a draft environmental statement containing information comparable to an agency draft statement pursuant to section 7 of the Guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for new major license filed pursuant to the Federal Power Act for constructed Oneida Project No. 472 located on the Bear River in Franklin County, Idaho.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, VA 22151.

The Oneida project consists of a concrete gravity dam and earth dike forming a reservoir having a surface area of 480 acres at normal water surface elevation 4,882.9 feet USGS and three steel penstocks extending to a powerhouse containing three 10,000-kw. generators. Existing recreational features include boat docking and launching facilities. Applicant proposes a development to include several picnic and camping areas.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors enumerated in § 2.80 of Order 415-B. Written statement by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 45 days from July 14, 1972. The Commission will consider all responses to the statement.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-11547 Filed 7-25-72;8:48 am]

GENERAL SERVICES ADMINISTRATION

CUSHION, CARPET, AND RUG, CELLULAR RUBBER

Industry Specification Development Conference

Notice is hereby given that the Federal Supply Service, General Services Administration, will hold an Industry Specification Development Conference in connection with Proposed Federal Specification ZZ-C-811C, Cushion, Carpet, and Rug, Cellular Rubber.

The purpose of the conference is to provide a forum for consideration of suggestions, ideas, or ways and means to improve the specification to: (1) Promote mutual understanding by both the Government and industry of the Government's technical requirements for the items and (2) enhance the quality of the products shipped to the Government. It will be open to all those in the private sector who have an interest or concern for these matters and all other Government departments or agencies having an interest therein are also being invited to send their representatives.

The conference will be held on August 23, 1972, at 9:30 a.m., Room 508, Building 3, Crystal Mall, 1931 Jefferson Davis Highway, Arlington, Va. Anyone who wants to attend or desires further information should contact Mr. Joseph F. Lawless, General Services Administration, Federal Supply Service, at telephone number (Area Code 703) 557-7866 or write General Services Administration (FMSF), Washington, D.C. 20406.

Issued in Washington, D.C., on July 17, 1972.

L. E. SPANGLER,
Acting Commissioner.

[FR Doc.72-11548 Filed 7-25-72;8:48 am]

HAND TOOLS

Industry Specification Development Conference

Notice is hereby given that the Federal Supply Service, General Services Administration, will hold an Industry Specification Development Conference in connection with the following Federal Specifications:

GGG-W-641D—Wrench, Socket (and sockets, handles and attachments for socket wrenches; hand).
GGG-W-636D—Wrenches (box, open-end, and combination).

The Purpose of the conference is to provide a forum for consideration of suggestions, ideas, or ways and means to improve the specification to: (1) promote mutual understanding by both the Government and industry of the Government's technical requirements for the items and (2) enhance the quality of the product to be shipped to the Government. It will be open to all those in the private sector who have an interest or concern for these matters and all other Government departments or agencies having an interest therein are also being invited to send their representatives.

The conference will be held on August 22-24, 1972, at 9 a.m., Room 1022, Building 4, Crystal Mall, 1941 Jefferson Davis Highway, Arlington, VA. Anyone who wants to attend or desires further information should contact Mr. W. R. Wacker, General Services Administration, Federal Supply Service, at telephone number (Area Code 703) 557-7800 or

write General Services Administration (FMSK), Washington, D.C. 20406.

Issued in Washington, D.C., on July 14, 1972.

M. S. MEEKER,
Commissioner.

[FR Doc.72-11549 Filed 7-25-72;8:48 am]

OFFICE OF EMERGENCY PREPAREDNESS

OHIO

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 11575 of December 31, 1970; and by virtue of the Act of December 31, 1970, entitled "Disaster Relief Act of 1970" (84 Stat. 1744), as amended by Public Law 92-209 (85 Stat. 742); notice is hereby given that on July 19, 1972, the President declared a major disaster as follows:

I have determined that the damages in certain areas of the State of Ohio from severe storms and flooding, beginning about June 23, 1972, are of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of Ohio. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575 to administer the Disaster Relief Act of 1970 (Public Law 91-606, as amended), I hereby appoint Mr. Robert E. Connor, Regional Director, OEP Region 5, to act as the Federal Coordinating Officer to perform the duties specified by section 201 of that Act for this disaster.

I do hereby determine the following areas in the State of Ohio to have been adversely affected by this declared major disaster:

The counties of:

Belmont.	Lake.
Cuyahoga.	Lorain.
Jefferson.	Monroe.

Dated: July 21, 1972.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.72-11551 Filed 7-25-72;8:49 am]

SMALL BUSINESS ADMINISTRATION

[License 03/10-0104]

TECHNO-GROWTH SBIC, INC.

Notice of Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Techno-Growth SBIC, Inc. (Techno-Growth), 1712 Locust Street, Philadelphia, PA 19103, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application with the Small Business Administration (SBA), pursuant to section 312 of the Act and covered by § 107.1004 of the SBA rules and regulations governing the Small Business Investment Companies (13 CFR 107.1004 (1971)), for approval of a conflict of interest transaction falling within the scope of the above sections of the Act and regulations.

Subject to such approval, Techno-Growth proposes to invest in Conographic Corp. (Conographic). Conographic designs, develops, manufactures, and markets a novel cathode ray tube graphics display.

The proposed investment is brought within the purview of § 107.1004 of the regulations since Dr. George M. Parks is a Director of Techno-Growth and Conographic, Dr. Morris Rubinoff is a Director of Techno-Growth's parent, Radonics, Inc., and Conographic and Radonics, the licensee's parent, owns 32 percent of Conographic. Techno Growth will purchase the common stock of Conographic.

Notice is hereby given that any interested person may, not later than 20 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Associate Administrator for Operations and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416. After expiration of the 20 days, SBA may dispose of this application on the basis of the information contained in the application, the comments (if any) which are received, and other relevant data.

Dated: July 19, 1972.

CLAUDE ALEXANDER,
Associate Administrator for Operations and Investment.

[FR Doc.72-11550 Filed 7-25-72;8:48 am]

VETERANS ADMINISTRATION

NEW VA HOSPITAL AND MODERNIZATION OF EXISTING BUILDINGS, COLUMBIA, S.C.

Notice of Availability of Draft Environmental Statement

Notice is hereby given that a draft document entitled "Draft Environmental Statement for a New 400-Bed Veterans Administration Hospital and Modernization of Existing Buildings, Columbia, South Carolina" dated April 17, 1972, has been prepared as required by the National Environmental Policy Act of 1969. This project consists of construction of a new 400-bed hospital building and a new building for clinics. The overall capacity of the hospital, including nursing home care, will be increased from 520 to 580 beds. The site is in the city of Columbia, Richland County, S.C. The draft statement discusses the environmental impact of the proposed work at our hospital in that location. The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office:

Mr. Arthur W. Farmer, Assistant Chief Medical Director for Administration and Facilities, Room 600, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Single copies of the draft statement may be obtained on request to the above office.

Dated: July 18, 1972.

[SEAL] DONALD E. JOHNSON,
Administrator.

[FR Doc.72-11540 Filed 7-25-72;8:47 am]

INTERSTATE COMMERCE COMMISSION

[Notice 38]

ASSIGNMENT OF HEARINGS

JULY 21, 1972.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 119774 Sub 41, Mary Ellen Stidham, N. M. Stidham, A. E. Mankins (Inez Mankins, executrix) and James E. Mankins, Sr., doing business as Eagle Trucking Co., MC 120257 Sub 13, K. L. Breeden & Sons, Inc., now being assigned hearing August 4, 1972 (1 day), at St. Louis, Mo., will be held in Room 1612, 1520 Market Street, St. Louis, Mo.

MC 117943 Sub 1, Joseph M. Booth, doing business as J. M. Booth Trucking, now assigned August 9, 1972, will be held in Room F-2220, 26 Federal Plaza, New York, N.Y.

MC-136387, Hollis D. Greer doing business as Greer's Service, now assigned July 26, 1972, at Los Angeles, Calif., is cancelled and application dismissed.

AB 5 Sub 1, George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees of the property of Penn Central Trans. Co., debtor, abandonment, between Williamsport, Pa., and Southport, N.Y., in Lycoming, Tioga and Bradford Counties, Pa., and Chemung County, N.Y., now assigned August 7, 1972, will be held in Courtroom No. 1, Williamsport Post Office, 245 West Fourth Street, Williamsport, PA.

MC 12830 Sub 2, Canton Automobile Club, Inc., doing business as Canton Automobile Club, now assigned August 21, 1972, at Columbus, Ohio, in Room 4, State Office Building, 65 South Front Street, Columbus, OH.

MC-C-7723, Bulk Haulers, Inc. v. Central Transport, Inc., now assigned August 8, 1972, at Raleigh, N.C., hearing will be held in Room 342, Federal Building, 310 Newbern Avenue, Raleigh, N.C.

MC 2202 Sub 396, Roadway Express, Inc., now assigned August 7, 1972, will be held in the Louisiana State Library Building, Conference Room, Fifth Floor, 760 North Third Street, Baton Rouge, LA.

MC-52858 Sub 108, Convoy, Co., a Corporation, now assigned August 7, 1972, at Denver, Colo., is canceled and application dismissed.

I&SM 25952, Household Goods, Increased Rates Nationwide, now being assigned hearing September 12, 1972, at Washington, D.C., in the offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-7716, United Van Lines, Inc., Investigation and Revocation of Certificate, now assigned August 9, 1972, MC 107295 Sub 596, Pre-Fab Transit Co., now assigned August 11, 1972, MC 119777 Sub 199, Ligon Specialized Hauler, Inc., now assigned August 7, 1972, will be held in Room 1612, 1520 Market Street, St. Louis, MO.

Ex Parte No. 270 Sub 1A, Investigation of Railroad Freight Rate Structure, Export-Import Rates and Charges, now being assigned hearing September 25, 1972, at San Francisco, Calif., in a hearing room to be later designated.

Ex Parte No. 270 Sub 1B, Investigation of Railroad Freight Rate Structure, Export-Import Rates and Charges now being assigned hearing October 30, 1972, at Chicago, Ill., in a hearing room to be later designated.

MC 111812 Sub 447, Midwest Coast Transport, Inc., now assigned August 15, 1972, MC 117610 Sub 8, Derrico Trucking Corp., now assigned August 14, 1972, MC 135736 Sub 1, Fleet Services, Inc., now assigned August 16, 1972, will be held in Room F-2220, 26 Federal Plaza, New York, N.Y.

No. 35634, Lighterage at New York Harbor, Erie Lackawanna Railway, now being assigned hearing November 8, 1972, at New York, N.Y., in a hearing room to be later designated.

MC-C 7558, The Blue Line, Inc—Investigation and revocation of certificates, now assigned August 15, 1972, will be held in Room 565A, Connecticut Public Utilities Commission, State Office Building, 165 Capitol Avenue, Hartford, CT.

I & S M 25958, Classification ratings on cushions, pads, or pillows, now being assigned hearing September 13, 1972, in the offices of the Interstate Commerce Commission, Washington, D.C.

MC-C 7166, Travel Center of Waterbury, Inc. v. Continental Trailways, Inc. et al., MC-C 7631, Travel Center of Waterbury, Inc. v. Eastern Ski Tours, Inc. et al., now assigned August 21, 1972, will be held in Room A238, Court of Claims, 26 Federal Plaza, New York, N.Y.

MC 135955, Bakker Service Station, Inc., now assigned August 23, 1972, will be held in Room A238, Court of Claims, 26 Federal Plaza, New York, N.Y.

MC 60430 Sub 20, Friedman's Express, Inc., now assigned August 21, 1972, will be held in Room F-2220, 26 Federal Plaza, New York, N.Y.

I & S M 25977, Classification of gelatin capsules, now being assigned hearing September 27, 1972, at the offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-11559 Filed 7-25-72;8:48 am]

[Notice 22]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JULY 21, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 58973 (Deviation No. 1), ABLER TRANSFER, INC., 1006 Eighth Street, Post Office Box 708, Norfolk, NE 68701, filed July 5, 1972. Carrier's representative: Earl H. Scudder, Jr., Post Office Box 82028, Lincoln, NE 68501. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From South Yankton, Nebr., over U.S. Highway 81 to junction South Dakota Highway 50, thence over South Dakota Highway 50 to junction Interstate Highway 29, thence over Interstate Highway 29 to Sioux City, Iowa, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: from South Yankton, Nebr., over U.S. Highway 81 to junction Nebraska Highway 12, thence over Nebraska Highway 12 to junction U.S. Highway 20, thence over U.S. Highway 20 to Sioux City, Iowa, and return over the same route.

No. MC 58973 (Deviation No. 2), ABLER TRANSFER, INC., 1006 Eighth Street, Post Office Box 708, Norfolk, NE 68701, filed July 5, 1972. Carrier's representative: Earl H. Scudder, Jr., Post Office Box 82028, Lincoln, NE 68501. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Sioux City, Iowa, and Council Bluffs, Iowa, over Interstate Highway 29, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Sioux City, Iowa, over U.S. Highway 77 to junction U.S. Highway 275 at Fremont, Nebr., thence over U.S. Highway 275 to junction U.S. Highway 6 (formerly Alternate U.S. Highway 30), thence over U.S. Highway 6 to Council Bluffs, Iowa, and return over the same route.

No. MC-127602 (Deviation No. 1), DENVER - MIDWEST MOTOR FREIGHT, INC., 67 and J Streets, Omaha, Nebr. 68117, filed July 6, 1972. Carrier's representative: Earl H. Scudder, Jr., Post Office Box 82028, Lincoln, NE 68501. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction Minnesota Highways 15 and 60, at Madelia, Minn., over Minnesota Highway 60 to junction U.S. Highway 169, thence over U.S. Highway 169 to junction Minnesota Highway 101, thence over Minnesota Highway 101 to junction Interstate Highway 35, thence over Interstate Highway 35 to Minneapolis, Minn., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From St. Paul-Minneapolis, Minn., over U.S. Highway 12 to junction Minnesota Highway 110 east of Maple Plain, Minn., thence over Minnesota Highway 110 to junction Hennepin County Road 6, thence over Hennepin County Road 6 to the east boundary line of Carver County, thence over Carver County Road 20 to Watertown, Minn., thence over Minnesota Highway 25 to junction Carver County Road 20, thence over Carver County Road 20 to the east boundary line of McLeod County, thence over McLeod County Road 6 to Winsted, Minn., and (2) from Sioux City, Iowa, over U.S. Highway 75 to junction Iowa Highway 60, thence over Iowa Highway 60 to the Iowa-Minnesota State line, thence over Minnesota Highway 60 to junction Minnesota Highway 15, thence over Minnesota Highway 15 to junction U.S. Highway 212, thence over U.S. Highway 212 to junction Minnesota Highway 261, thence over Minnesota Highway 261 to Winsted, Minn., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-11560 Filed 7-25-72;8:48 am]

[Notice 55]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

Correction

In F.R. Doc. 72-10664 appearing at page 13664 of the issue for Wednesday July 12, 1972, the name in the ninth line of No. MC-F-11595 should be "W. W. CALLAN," instead of "K. W. CALLAN,".

[Notice 59]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS [1]

JULY 21, 1972.

The following publications are governed by the new Special Rule 1.247 of

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

the Commission's rules of practice published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 2153 (Sub-No. 42) (Republication), filed January 10, 1972, published in the FEDERAL REGISTER issue of February 10, 1972, and republished this issue. Applicant: MIDWEST MOTOR EXPRESS, INC., 1205 Front Avenue, Post Office Box 1058, Bismarck, ND 58501. Applicant's representative: James L. Nelson, 325 Cedar Street, St. Paul, MN 55101. An order of the Commission, Operating Rights Board, dated June 21, 1972, and served July 17, 1972, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between St. Paul and McGregor, Minn., from St. Paul, over U.S. Highway 10 to junction Minnesota Highway 65, thence over Minnesota Highway 65 to McGregor, and return over the same route, serving no intermediate points and the off-route points in Libby, Logan, Workman, Hamrock, Haugen, Leming, McGregor, Clark, Spencer, Kimberly, Jevne, Davidson, Spalding, Solo, Glen, Lee, Rice River, and Beaver Townships (Aitkin County), Minn., and Lakeview and Automba Townships (Carlton County), Minn., that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings, in this order, a notice of the actual service for which a need has been found will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of at least 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 97874 (Sub-No. 2) (Republication), filed July 28, 1971, published in the FEDERAL REGISTER issues of September 2, 1971, and November 11, 1971, and republished this issue. Applicant: WINTER BROS., INC., 1840 R Street, Lincoln, NE 68508. Applicant' representative: J. Max Harding, Post Office Box 82028, 605 South 14th Street, Lincoln, NE 68501. An order of the Commission, Operating Rights Board, dated June 7, 1972, and served July 12, 1972, finds that operation by applicant, in interstate or foreign commerce as a common carrier by motor vehicle of general commodities (except commodities in bulk, those of unusual value, household goods, classes A and B explosives, and those requiring special equipment), (1) over regular routes between Omaha and Lincoln, Nebr., over U.S. Highway 6 serving no intermediate points and (2) over irregular routes (a) between points in Seward, Saline, Fillmore, York, Polk, Butler, Saunders, and Lancaster Counties, Nebr., and (b) between points in the Nebraska counties named in (2)(a) above, on the one hand, and, on the other, points in Nebraska; restricted in (2) above, against the transportation of traffic originating at or destined to Omaha and Lincoln, Nebr.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene setting forth the manner in which it has been prejudiced.

No. MC 128958 (Sub-No. 2) (Republication), filed September 13, 1971, published in the FEDERAL REGISTER issue of October 15, 1971, and republished this issue. Applicant: CENTRAL PENN AIR SERVICE, INC., 141 Access Road, Olmstead State Airport, Middletown, PA 17057. Applicant's representative: John M. Musselman, 400 North Third Street, Harrisburg, PA 17108. A supplemental order of the Commission, Operating Rights Board, dated June 7, 1972, and served June 29, 1972, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of general commodities (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between points in Adams, Bedford, Berks, Blair, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Perry, Snyder, Sullivan, Union, and York Counties, Pa., on the one hand, and, on the other, Newark, N.J., and points in that portion of the New York, N.Y., commercial zone, as defined by the Commission in the sixth supplemental report in *Commercial Zones and Terminal Areas*, 54 M.C.C. 21, 90 (1952) within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act (the "exempt" zone) restricted to the transportation of traffic having a prior or subsequent movement by air; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. That since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation in our findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the preceding setting forth in detail the precise manner in which it has been prejudiced.

APPLICATION FOR CERTIFICATE OR PERMIT WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 1515 (Sub-No. 179) (Correction), filed May 31, 1972. Applicant: GREYHOUND LINES, INC., 1400 West Third Street, Cleveland, Ohio 44113. Applicant's representative: Anthony C. Carr (same address as applicant). NOTE: The purpose of this republication is to show that applicant does not have a pending contract carrier application under MC 136186 (Sub-No. 2). Previous publication made this statement, in error. The rest of the notice remains as previously published.

APPLICATIONS UNDER SECTIONS 5(a) AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11604. Authority sought for purchase by McBRIDE TRANSPORTATION, INC., 289 West Main Street,

Goshen, NY 10924, of the operating rights of C & E TRUCKING CORPORATION, Route 212, Saugerties, N.Y. (Assignee Alfred A. Rosenberg, 16 Court Street, Brooklyn, NY), and for acquisition by H. LEON McBRIDE, SR., FRANK McBRIDE, SR., H. LEON McBRIDE, JR., and FRANK McBRIDE, JR., all of 289 West Main Street, Goshen, NY 10924, of control of such rights through the purchase. Applicants' attorney: Raymond A. Richards, 44 North Avenue, Webster, NY 14580. Operating rights sought to be transferred: *Sugar syrup,* in bulk, in tank vehicles, as a *contract carrier* over irregular routes, from Yonkers, N.Y., to Burlington, Vt.; *liquid sugar, invert sugar, syrup,* and *flavorings,* in bulk, in tank vehicles, from New York, N.Y., to Annapolis and Baltimore, Md., Allentown, Harrisburg, and Pittsburgh, Pa., and Alexandria, Va.; *liquid sugar* and *invert sugar,* in bulk, in tank vehicles, from Yonkers, N.Y., to Bradford and Erie, Pa., from Yonkers, N.Y., to points in a defined area of Pennsylvania; *flavoring syrup,* in bulk, in tank vehicles, from New York, N.Y., to points in a defined area of Pennsylvania, with restriction; *blends or mixtures of corn syrup and liquid or invert sugar,* in bulk, in tank vehicles, from Long Island City, N.Y., to Alexandria, Va., Annapolis and Baltimore, Md., and points in a defined area of Pennsylvania, from Yonkers, N.Y., to Alexandria, Va., Annapolis and Baltimore, Md., and points in a defined area of Pennsylvania, with restrictions.

Liquid sugar, invert sugar, and blends or mixtures of liquid and invert sugar and corn syrup, in bulk, in tank vehicles, from Bayonne, N.J., to points in a defined area of Pennsylvania, with restriction; *liquid sugar, invert sugar,* and *blends of liquid and/or invert sugar and corn syrups,* in bulk, in tank vehicles, from Yonkers, N.Y., and Bayonne, N.J., to Wilmington, Del., and to Philadelphia, Pa., and points within 25 miles of Philadelphia, with restriction; *wine* and *grape juice,* in bulk, in tank vehicles, from Fredonia, N.Y., to Greenville, N.H., with restriction; *liquid sugar, invert sugar, syrups,* and *blends or mixtures* of syrups and sugar, in bulk, in tank vehicles, from Montezuma, N.Y., to points in a defined area of Pennsylvania, and to Annapolis and Baltimore, Md., Alexandria, Va., and Wilmington, Del., with restriction; *fruit juices,* in bulk, in tank vehicles, from Fredonia, N.Y., to Philadephia, Pa., with restriction; *liquid sugar, invert sugar,* and *blends of liquid and/or invert sugar, and/or corn syrup,* from Yonkers, N.Y., and Bayonne, N.J., to Chestertown, Md., with restriction; *flavorings and flavoring syrups* (except liquid chocolate, liquid chocolate coatings, liquid chocolate liquor, cocoa butter, and liquid vegetable oil coatings) and *liquid sugar, invert sugar,* and *blends and mixtures* of liquid and/or invert sugar and corn syrup, in bulk, in tank vehicles, from New York and Yonkers, N.Y., to points in Delaware and Maryland, with restriction. Vendee is authorized to operate as a *common carrier* in New York, Pennsylvania, Connecticut, New Jersey, Ohio, Maryland, Massachusetts, Vermont, Maine, New Hampshire, Rhode Island, Delaware, Michigan, Virginia, West Virginia, Illinois, Kentucky, and the District of Columbia. Application has been filed for temporary authority under section 210a(b). NOTE: MC-80428 (Sub-No. 80), is a matter directly related.

MOTOR CARRIER PASSENGER

No. MC-F-11605. Authority sought for purchase by EVERGREEN STAGE LINE, INC., 9038 North Denver Avenue, Post Office Box 17306, Portland, OR 97217, of a portion of the operating rights and property of GREYHOUND LINES, INC., Greyhound Tower, Phoenix, Ariz. 85077, and for acquisition by VERNON L. TRIGG, also of Portland, Oreg. 97217, of control of such rights and property through the purchase. Applicants' attorney: Robert R. Hollis, 1121 Commonwealth Building, 421 Southwest Sixth, Portland, OR 97204. Operating rights sought to be transferred: Passengers and their baggage, and express and newspapers, in the same vehicle with passengers, subject to certain conditions, as a common carrier over regular routes, between Astoria and Portland, between Astoria and Tillamook, between Manzanita and junction unnumbered highway and U.S. Highway 101, between Warrenton Junction and Skipanon Junction via Warrenton, between Gearhart and junction unnumbered highway and U.S. Highway 101, between Seaside Junction and Portland, between Tillamook and Sylvan, between Glenwood Junction and Manning Junction, over one alternate route for operating convenience only. Vendee is authorized to operate as a common carrier in Washington and Oregon. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11606. Authority sought for purchase by MILLER'S MOTOR FREIGHT, INC., 1060 Zinn's Quarry Road, York, PA 17405, of the operating rights of VENCO TRUCKING, INC., 211 West First Street, Oil City, PA 16301, and for acquisition by PAUL W. HIVELY, 287 Dew Drop Road, York, PA, of control of such rights through the purchase. Applicants' attorney: S. Harrison Kahn, Suite 733, Investment Building, Washington, DC 20005. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-121473 (Sub-No. 1), covering the transportation of property, as a common carrier, in interstate commerce, within the State of Pennsylvania. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b). NOTE: MC-41915 (Sub-No. 38), is a matter directly related.

No. MC-11607. Authority sought for control by LONG ISLAND MOTOR HAULAGE CORP., 58-51 52d Avenue, Woodside, NY 11377, of C. & L. TRANS., INC., 527 West 28th Street, New York, NY 10001, and for acquisition by JOSEPH T. WEISDORF, also of Woodside, N. Y. 11377, of control of C. & L. TRANS., INC., through the acquisition by LONG ISLAND MOTOR HAULAGE CORP. Applicants' attorney: William Biederman, 280 Broadway, New York, NY 10007. Operating rights sought to be controlled: Under a certificate of registration, in Docket No. MC-98785 (Sub-No. 1), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of New York. Vendee is authorized to operate as a *common carrier* in New Jersey, New York, and Pennsylvania. Application has been filed for temporary authority under section 210a(b). NOTE: MC-98785 (Sub-No. 2), is a directly related matter.

No. MC-F-11608. Authority sought for purchase by HEMINGWAY TRANSPORT, INC., 438 Dartmouth Street, New Bedford, MA 02742, of the operating rights and property of GLEASON TRANSPORTATION CO., INC., Post Office Box 369, Bellows Falls, VT 05101, and for acquisition by PHILIP HEMINGWAY, PHILIP L. HEMINGWAY, and BERNADETTE HEMINGWAY, all of New Bedford, MA 02742, of control of such rights and property through the purchase. Applicants' attorneys: Kenneth B. Williams, 111 State Street, Boston, MA 02109, and Frederick T. O'Sullivan, 622 Lowell Street, Peabody, MA 01960. Operating rights sought to be transferred: *General commodities,* excepting, among others, classes A and B explosives, household goods and commodities requiring special equipment, as a *common carrier* over regular routes, between Boston, Mass., and Brattleboro, Vt.: service is authorized to and from the intermediate points of Keene, N.H., and those in Massachusetts; and the off-route points of Peabody, Maynard and Gardner, Mass., and those within 5 miles of Boston; *woodwork machinery and road construction machinery,* over irregular routes, from New York, N.Y., to Keene, N.H., and points within 10 miles of Keene; *silver polish, new furniture, furniture forms, fruit, and maple syrup,* from Keene, N.H., to New York, N.Y.; *household goods* as defined by the Commission, between points on the regular-route described above, including the off-route points specified, those on New Hampshire Highway 10 from Keene, N.H., to the New Hampshire-Massachusetts State line, those on Massachusetts Highway 10 from the State line to junction U.S. Highway 5, those on U.S. Highway 5 from said junction to Springfield, Mass., those within 5 miles of Springfield, and those on New Hampshire Highway 119 between Winchester, N.H., and Brattleboro, Vt., including the points named, those in Cheshire County, N.H., and those in Windham County, Vt., on the one hand, and, on the other, points in Massachusetts.

Such merchandise as is dealt in by chain grocery stores and in connection therewith supplies used in the conduct of such stores, between points in Vermont, from Rutland and Burlington, Vt., to

points in New York within 150 miles of Rutland; *newspapers,* from Rutland, Vt., to Granville, N.Y., and to points in New Hampshire; *catalogs,* from Rutland, Vt. to points in Vermont within 100 miles of Rutland; *apples,* from points in Vermont on and south of a line beginning at Wells River, Vt., and extending along U.S. Highway 302 to junction U.S. Highway 2 at East Montpelier, Vt., thence along U.S. Highway 2 to Burlington, Vt., to Albany, Red Hook, and New York, N.Y., and Springfield, Mass.; *general commodities,* excepting among others, classes A and B explosives, household goods and commodities in bulk, between points in Vermont; *salted butter,* from Ogdensburg and Champlain, N.Y., to Burlington and Rutland, Vt. Vendee is authorized to operate as a common carrier in New Hampshire, Massachusetts, Maine, New York, Rhode Island, New Jersey, Vermont, Georgia, Connecticut, Pennsylvania, Delaware, Maryland, North Carolina, Virginia, West Virginia, South Carolina, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11609. Authority sought for purchase by WM. McCULLOUGH TRANSPORTATION CO., INC., 1130 Spring Street (U.S. Highway No. 1), Elizabeth, NJ 07201, of a portion of the operating rights of ATKINSON FREIGHT LINES, INC., 4450 Rising Sun Avenue, Philadelphia, PA 19140, and for acquisition by ALL FREIGHT INC., and, in turn by ALFRED J. Di RESTA, both of Elizabeth, N.J. 07201, of control of such rights through the purchase. Applicants' attorneys: A. David Millner, 744 Broad Street, Newark, NJ 07102, and Alan Kahn, 2 Penn Center Plaza, Philadelphia, PA 19102. Operating rights sought to be transferred: *General commodities,* except those of unusual value, high explosives, automobiles, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, as a *common carrier* over regular routes, between Washington, D.C., and Baltimore, Md., serving the off-route points of Annapolis, Bowie, Brooklyn, Cedarhurst, and Odenton, Md., between Baltimore, Md., and Philadelphia, Pa., serving the intermediate point of Bel Air, Md., and the off-route points of Cockeysville, Pikesville, Reisterstown, Towson, and Westminster, Md., and West Chester, Pa., between Wilmington, Del., and Philadelphia, Pa., serving the intermediate point of Chester, Pa. Vendee is authorized to operate as a common carrier in New York, New Jersey, Pennsylvania, Massachusetts, Rhode Island, and Connecticut. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-11561 Filed 7-25-72;8:49 am]

[Notice 96]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73570. By supplemental order of July 18, 1972, the Motor Carrier Board approved the transfer to Noble Graham Transport, Inc., Brimley, Mich., of additional certificates in Nos. MC-107162 (Sub-No. 30) and MC-107162 (Sub-No. 32), issued April 10, 1972 and June 8, 1972, respectively, to Noble Graham, Brimley, Mich., authorizing the transportation of: Hardwood flooring systems, hardwood flooring, lumber and lumber products, and accessories and supplies used in the installation thereof, from the plant and warehouse sites of Robbins Flooring Co., at or near Ishpeming, Mich., and White Lake, Wis., to points in 35 States and the District of Columbia; Materials, equipment, and supplies used in the manufacture and distribution of the above commodities, in the reverse direction; Wood fencing, posts, and accessories used in the installation thereof, from points in the Upper Peninsula of Michigan and the facilities of Habitant Fence Division, Habitant Shops, Inc., at or near Alpena, Mich., to points in 40 States and the District of Columbia: and hardwood flooring systems, hardwood flooring, lumber, lumber products and accessories used in the installation thereof, from the facilities of Horner Flooring Co., at Dollar Bay, Mich., to points in 33 States and the District of Columbia. John D. Varda, 121 South Pinckney Street, Madison, WI 53703, attorney for applicants.

No. MC-FC-73743. By order of July 17, 1972, the Motor Carrier Board approved business as Pike & Sons Movers, Inc. 418 South Spring Street, Lexington, KY 40508 of Certificate No. MC-133930 (Sub-No. 1) issued August 10, 1970, to Gene Pike and Kirk Pike, a partnership, doing business as Pike & Sons Movers, Inc. (above address), authorizing the transportation of: Used household goods, between points in a specified area of Kentucky, in and east of designated counties.

No. MC-FC-73753. By order of July 12, 1972, the Motor Carrier Board approved the transfer to Clement Bresina, Chippewa Falls, Wis., of a portion of Certificate No. MC-108435 (Sub-No. 8) issued October 29, 1956, to Oscar C. Radke, doing business as Radke Transit, Wausau, Wis., authorizing transportation of: Animal and poultry feeds, in bulk and in bags, from Minneapolis, Minn., to points in specified counties in Wisconsin. A. R. Fowler, 2288 University Avenue, St. Paul, MN 55114, practitioner.

No. MC-FC-73757. By order of July 17, 1972, the Motor Carrier Board approved the transfer to Bruce Bohnen, doing business as Bohnen Truck Line, Dorrance, Kans., of Certificate No. MC-106314, issued October 20, 1966, to Dale Trucking, Inc., Wilson, Kans., authorizing the transportation of: Building materials, agricultural implements and parts, beer, eggs, salt, and feed, and containers therefore, between specified points and areas in Kansas, Arkansas and Missouri. Rex L. Culley, Banker Building, Russell, Kans. 67665, attorney for applicants.

No. MC-FC-73776. By order of July 13, 1972, the Motor Carrier Board approved the transfer to Lloyd D. Mitchell, doing business as Mitchell's Transfer, Minot, N. Dak., of the operating rights in Permit No. MC-23978 issued September 10, 1945, to Ernest Bieri, doing business as Stanley Transfer, Stanley, N. Dak., authorizing the transportation of general commodities, with exceptions, over specified routes, between Minot, N. Dak., and Van Hook, N. Dak., serving all intermediate points. Harris P. Kenner, Post Office Box 36, Minot, ND 58701, attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-11562 Filed 7-25-72;8:49 am]

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PART II

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

■

Procurement Regulations; Miscellaneous Amendments

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 18—National Aeronautics and Space Administration

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following revisions to Chapter 18 of Title 41 are prescribed as set forth below. These revisions to Chapter 18 covering changes made by Revision 4 of the NASA Procurement Regulation are effective 60 days from June 1, 1972, except for interim changes made by Procurement Regulation Directives.

PART 18–1—GENERAL PROVISIONS

1. Section 18–1.324–10 is revised to read as follows:

§ 18–1.324–10 Example of warranty clause for fixed-price construction contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type construction contracts in accordance with §§ 18–1.324–2 and 18–1.324–3.

WARRANTY OF CONSTRUCTION (JUNE 1972)

(a) In addition to any other warranties set out elsewhere in this contract, the Contractor warrants that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. Such warranty shall continue for a period of 1 year from the date of final acceptance of the work, but with respect to any part of the work which the Government takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the Government takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to Government owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for 1 year from the date of such repair or replacement.

(b) The Government shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

(c) Should the Contractor fail to remedy any failure, defect or damage described in (a) above within reasonable time after receipt of notice thereof, the Government shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

(d) In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the Government, be enforced by the Contractor for the benefit of the Government. In such case if the Contractor's warranty under (a) above has expired, any suit directed by the Government to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Government. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

(e) If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed in writing to the Government.

(f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage which results from any such defect in Government furnished material or design.

(g) The warranty specified herein shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistake, or fraud.

(b) If the Government specifies the use of any equipment by "brand name and model," the following paragraph (h) should be added to the Warranty of Construction clause of the contract.

(h) Defects in design or manufacture of equipment, specified by the Government on a "brand name and model" basis, shall not be included in this warranty. The Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Government.

(c) Final payment shall not be withheld solely to provide security for the contractor's performance under the warranty with respect to possible future defects, without the approval of the head of the installation which shall be given only in unusual circumstances.

2. Section 18–1.332 is added.

§ 18–1.332 Minority business enterprises.

§ 18–1.332–1 General.

(a) In connection with Executive Order 11625, October 13, 1971 (36 F.R. 199, Oct. 14, 1971), it has been determined that the national interest requires increased involvement of minority business enterprises in Federal procurement programs. In support of this policy, continuing efforts will be made (1) to facilitate the placement of minority individuals and minority-owned firms on source lists to assure that they are appropriately solicited, (2) to counsel such individuals and firms with respect to procurement policies and procedures and NASA business opportunities so as to enhance their potential participation, and (3) to inform such individuals and firms concerning subcontracting opportunities, including identification of major NASA programs and current or prospective prime contractors that might offer opportunity for participation. Unless otherwise assigned by the head of the installation, the small business/labor surplus area specialist at each installation is assigned primary responsibility for this effort.

(b) The implementation of this policy involves other types of assistance such as contracting with the Small Business Administration under section 8(a) of the Small Business Act (see § 18–1.705–5). Additionally, to further the opportunities of minority business enterprises to participate in the performance of Government contracts, maximum practicable opportunity should be provided for these firms to participate as subcontractors and suppliers to prime contractors and subcontractors under Government contracts.

(c) Accordingly, effort should be put forth to provide to minority business enterprises counseling services with respect to procurement policy and procedures and information covering NASA business opportunities, and to have the names of such firms included on source lists at the various procurement offices. Also, the Minority Business Subcontracting Program (§ 18–1.332–2) shall be effectively implemented.

(d) Definition: A minority business enterprise is defined in paragraph (b) of the clause in § 18–1.332–3(a).

§ 18–1.332–2 Minority business enterprises subcontracting program.

The Government's minority business enterprises subcontracting program requires Government contractors to assume affirmative obligations with respect to subcontracting with minority business enterprises. These obligations are in addition to those required under the small business subcontracting program (§ 18–1.707) and under the labor surplus area subcontracting program (§ 18–1.805). In contracts which range from $5,000 to $500,000, the contractor undertakes the accomplishment of a maximum amount of subcontracting with minority business enterprises, consistent with efficient performance of the contract. This is set forth in the clause in § 18–1.332–3(a). For contracts which may exceed $500,000 the clause set forth in § 18–1.332–3(b) requires that the contractor undertake a number of specific responsibilities designed to assure that minority business enterprises are given all possible consideration in the placement of subcontracts and to impose similar responsibilities on major subcontracts.

§ 18–1.332–3 Required clauses.

(a) The following clause shall be included in all contracts in amounts which may exceed $5,000 except contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

UTILIZATION OF MINORITY BUSINESS ENTERPRISES (DECEMBER 1971)

(a) It is the policy of the Government that Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in

case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Puerto Ricans, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

(b) The following clause shall be included in all contracts (except maintenance, repair and construction contracts) which may exceed $500,000, which require the clause in paragraph (a) of this section and which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Furthermore, prime contractors who are to be awarded contracts which may not exceed $500,000 but which, in the opinion of the contracting officer, offer substantial subcontracting possibilities, shall be urged to accept the clause.

MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM (DECEMBER 1971)

(a) The contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause, entitled, "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will administer the Contractor's "Minority Business Enterprises Program."

(2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.

(3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.

(5) Include the "Utilization of Minority Business Enterprises" clause in subcontracts which offer substantial minority business enterprise subcontracting opportunities.

(6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.

(7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The contractor further agrees to insert, in any subcontract hereunder which may exceed $500,000 provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

3. Section 18–1.350–3 is revised to read as follows:

§ 18–1.350–3 Lease amendments and renewals.

(a) Prior to executing any amendment to a lease or exercising a lease renewal option, where the total rental exceeds $10,000 per year, the lessor shall be requested to enter into a supplemental agreement to incorporate in the lease as part of the rental consideration, the "Facilities Nondiscrimination" clause set forth in § 18–1.350–2.

(b) The "Facilities Nondiscrimination" clause shall also be incorporated when the total aggregate rental of multiple NASA leases in a building is in excess of $10,000 per year.

(c) If agreement cannot be reached, the matter shall be submitted to the Director of Procurement, NASA Headquarters, with the recommendations of the head of the installation, at least 30 days prior to the date on which the amendment is to be executed or the notice of renewal must be issued.

4. Section 18–1.357 is revised to read as follows:

§ 18–1.357 Procurement of liquid hydrogen.

(a) To ensure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with primary supply sources located in Louisiana and in California. These contracts will be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

(b) Responsibility for administration of the sources and management of production and distribution operations have been vested in:

(1) The Marshall Space Flight Center for the Louisiana source, and

(2) The NASA Pasadena Office, for the California source.

(c) Requests for furnishing liquid hydrogen will be submitted to either the Marshall Space Flight Center or to the NASA Pasadena Office. The supply source used will be the one located nearest the receiving destination.

In § 18–1.603(a), subparagraph (6) is revised as follows:

§ 18–1.603 [Amended]

(6) *Type F* includes firms or individuals who have been reported by the Secretary of Labor as ineligible for Government contracts for noncompliance with (i) the Equal Opportunity clause set forth in § 18–12.804(a), or (ii) the Equal Opportunity (Federally Assisted Construction) (Applicant) clause set forth in § 18–12.804(b). Firms or individuals under Type F listings shall not be awarded contracts or be solicited for bids. (See § 18–12.814(a)(3).)

6. Section 18–1.603(c) is revised to read as follows:

* * * * *

(c) When a listed firm or an individual is proposed as a subcontractor, the contracting officer shall decline to consent to subcontracting with such firm or individual in any instance in which consent is required of the Government before the subcontract is made. If award of a subcontract to a listed firm or individual is considered in the best interest of the Government, the contracting officer, prior to approving such award, shall submit a written recommendation to the Procurement Office, citing complete and detailed justification for the award. Based on such justification, the Director of Procurement may authorize an exception to the restrictions imposed by the listings. In the case of subcontracts already in effect, prime contractors may not be required to terminate subcontracts with a listed firm or individual unless provisions of the prime contract reserve to the Government such control over subcontracting permitting the Government to require their termination. If the Government has such control, the contracting officer shall decide whether such subcontracts should be continued or terminated and forward his recommendations to the procurement officer (see § 18–1.226) for an appropriate determination. The procurement officer shall decide whether it is in the best interests of the Government to continue or terminate such subcontracts, unless otherwise prescribed by the Director of Procurement.

* * * * *

7. Sections 18–1.604–2 and 18–1.604–3 are revised to read as follows:

§ 18–1.604–2 Causes for debarment.

(a) Conviction by or a judgment obtained in a court of competent jurisdiction for:

(1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids or proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense, and all mitigating factors, shall be considered in making the decision to debar.

(b) Clear and convincing evidence of violation of contract provisions, as set forth below, when the violation is of a character so serious as to justify debarment action:

(1) Willful failure to perform in accordance with the specifications or delivery requirements in a contract;

(2) A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: *Provided*, That such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar (failure to perform or unsatisfactory performance caused by acts beyond the control of the

contractor shall not be considered as a basis for debarment); or

(3) Violation of the contractual provision against contingent fees.

(c) Any other causes affecting responsibility as a Government contractor of such serious and compelling nature as may be determined by the Administrator to justify debarment: *Provided,* That no firm or individual shall be debarred for failure to comply with (1) the Equal Opportunity clause set forth in § 18–12.804(a) or (2) the Equal Opportunity (Federally Assisted Construction) (Applicant) clause set forth in § 18–12.804 (b) except as prescribed under § 18–12.813–2.

(d) Debarment for any of the above causes by some other executive agency of the Government. Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts of the original debarring agency.

§ 18–1.604–3 Period and scope of debarment.

(a) *Period of debarment.* All debarments by NASA shall be for a reasonable, specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment will not exceed 3 years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period of any firm or individual who has been debarred by NASA for any of the causes set forth in § 18–1.604–2, the Director of Procurement will cause all of the facts and circumstances relating to the debarment to be reviewed. The debarment shall be removed at the expiration of the specified period, unless, on the basis of an evaluation of newly developed facts, it is determined that debarment for an additional period is required in order to protect the Government's interests. Where debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished the firm or individual in accordance with § 18–1.604–4. The debarment of a firm or individual may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the (1) Equal Opportunity clause set forth in § 18–12.804(a), or (2) the Equal Opportunity (Federally Assisted Construction) (Applicant) clause set forth in § 18–12.804(b) (Type F), the names of such firms or individuals shall be removed from the NASA list (§ 18–1.601–1) upon receipt of notification from the Secretary of Labor that the eligibility of such firms or individuals has been reestablished.

(b) *Scope of debarment.* (1) Debarment may include all known affiliates of a firm or individual. For the definition of an affiliate, see § 18–1.600(b).

(2) An attempt shall be made to determine who are the affiliates of any firm or individual who is proposed to be debarred. Consideration shall be given to initiating debarment against such affiliates whenever the facts and circumstances justifying debarment of the firm or individual concerned would also justify debarment of such affiliates.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected whenever the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

8. Section 18–1.605–3 is revised to read as follows:

§ 18–1.605–3 Causes for suspension.

A firm or individual may be suspended, whenever such suspension is determined to be in the interest of the Goverment, for the following causes:

(a) Whenever the firm or individual is suspected of—

(1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(2) Violation of the Federal antitrust status arising out of the submission of bids and proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor.

(b) Any other causes of such serious and compelling nature as may be determined to justify suspension; *provided,* that no firm or individual shall be suspended for failure to comply with the Equal Opportunity clause set forth in § 18–12.804(a) or the Equal Opportunity (Federally Assisted Construction) (Applicant) clause set forth in § 18–12.804 (b); except as prescribed under § 18–12.813–2.

9. Section 18–1.706–1 is revised to read as follows:

§ 18–1.706 Set-asides.

§ 18–1.706–1 General.

(a) Subject to any applicable preference for labor surplus area set-asides (see § 18–1.803(a)(2) and the following criteria, any individual procurement or class of procurements regardless of dollar value or any appropriate part thereof, shall be set-aside for the exclusive participation of small business concerns when such action is determined to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or assuring that a fair proportion of Government procurement is placed with small business concerns. The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer normally upon initiation by the small business specialist. If a small business specialist is not assigned or is otherwise not available, the set-aside may be initiated by the contracting officer. A joint determination is one which is made jointly by an SBA representative and the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed procurements over $2,500 which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(b) To provide for SBA consideration of individual set-asides, at the request of its representative, the procurement office shall make available to him for review at such office (to the extent that he has been granted security clearance) all proposed classified and unclassified procurements expected to exceed $2,500 on which unilateral set-asides have not been made by the contracting officer.

(c) In addition to individual procurement set-asides classes of current and future procurements, or portions thereof, of selected items or services, or groups of like items or services may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides will normally be initiated by recommendation of the small business specialist, but may also be initiated by the contracting officer. Joint class set-asides may be recommended by SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current procurement if future procurements can be clearly foreseen. Class set-asides shall apply only to the procurement office making or participating in the agreement and such set-asides, which are established for projected procurements over $2,500, shall be equally applicable to purchases under $2,500, to be effected by small purchase procedures, unless it is not practicable to effect a small purchase from a small business firm in a timely manner to meet an immediate requirement. A class set-aside agreement should specifically identify the items or services subject thereto. Any class of procurements proposed to be totally set-aside shall satisfy the requirements of § 18–1.706–5. The set-aside determination for any class of procurements proposed to be partially set-aside shall specify that it does not apply to any individual procurement not severable into two or more economic production runs or reasonable lots. Records of individual procurements under each class set-aside shall be maintained by individual procurement offices and shall include the solicitation number and date, item or service, unilateral or joint class set-asides, estimated dollar amount of the procurement, and estimated dollar amount of the set-aside. A copy of each such record shall be made available by each procurement office to the small business specialist or to SBA upon request.

(d) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item has been placed with small business concerns;

(2) A period of less than 30 days from date of issuance of solicitation is prescribed for the submission of the bids or proposals;

(3) The procurement is classified;

(4) Small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

(5) A class set-aside of the item or service concerned has been made at some other procurement office; or

(6) The item will be described by "brand name or equal."

10. Section 18–1.903–1 is revised to read as follows:

§ 18–1.903 Minimum standards for responsible prospective contractors.

§ 18–1.903–1 General standards.

Except as otherwise provided in this § 18–1.903, a prospective contractor must:

(a) Have adequate financial resources or the ability to obtain such resources as required during performance of the contract (see §§ 18–1.904–2 and 18–1.905–2, and for Small Business Administration (SBA) certificates of competency, see § 18–1.705–4);

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental (for SBA certificates of competency, see § 18–1.705–4);

(c) Have a satisfactory record of performance (contractors who are seriously delinquent in current contract performance, when the number of contracts and the extent of delinquencies of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to fulfill this requirement). Past unsatisfactory performance, due to failure to apply necessary tenacity or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility. (In the case of small business concerns, see §§ 18–1.705–4(c)(6) and 18–1.905–2);

(d) Have a satisfactory record of integrity (in the case of a small business concern, see § 18–1.705–4(c)(6));

(e) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, e.g., Subparts 18–12.6 and 18–12.8 (in the case of a small business concern, see § 18–1.705–4(c)(5));

(f) Display a willingness to conform to the Equal Opportunity clause or, if applicable, to the Equal Opportunity (Federally Assisted Construction) (Applicant) clause (see § 18–12.804).

11. Section 18–1.1002–1 is revised to read as follows:

§ 18–1.1002 Dissemination of information relating to invitations for bids and requests for proposals.

§ 18–1.1002–1 Availability of invitations for bids and requests for proposals at the contracting office.

A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the Commerce Business Daily, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of a procurement, requests for proposals shall be mailed or otherwise provided upon request to firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first come first served" basis, for pick up at the contracting office, to publishers, trade associations, procurement information services, and other members of the public having a legitimate interest therein; otherwise, the procurement office may limit the availability of such information to review at such office. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the procurement, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed procurements normally do not require voluminous specifications or drawings. With regard to classified procurements, the foregoing instructions apply to the extent consistent with NASA security instructions and procedures.

12. Sections 18–1.1003–2 and 18–1.1003–3 are revised to read as follows:

§ 18–1.1003–2 General requirements.

(a) Except for procurements described in paragraphs (b) and (c) of this section, every proposed advertised or negotiated procurement, including modifications to existing contracts when new funds are obligated for additional supplies and services, made in the United States, its possessions, and Puerto Rico which may result in an award in excess of $10,000 shall be publicized promptly in the Commerce Business Daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards." Modifications to an existing contract resulting from price changes, engineering changes, overruns, definitization of letter contracts, and other similar transactions need not be publicized in the Commerce Business Daily. In addition to the information normally included in a synopsis, the names and addresses of all firms which have been invited by NASA to submit proposals shall be furnished to the Department of Commerce for each proposed negotiated procurement which may result in an award of $100,000 or more where it would be in the Government's interest or where subcontracting opportunities exist. A copy of each synopsis sent to the Department of Commerce shall be furnished to the Procurement Office, NASA Headquarters (Code KD–2) and to the Office of Public Affairs, NASA Headquarters (Attention: Public Information Division) as required by this § 18–1.1003–2.

(b) Classified procurements, where the information necessary to be included in the Synopsis would disclose classified information or where the mere disclosure of the Government's interest in the area of the proposed procurement would violate security requirements, shall not be publicized in the Synopsis. All other classified procurements shall be publicized in the Synopsis, even though access to classified matter might be necessary in order to submit a proposal or to perform the contract (see § 18–1.1003–9(e)(3)). The intent of the exception for classified procurement in the synopsis requirements of Public Law 87–305 is not to exempt every classified procurement from publicizing, but to provide a safeguard against violating security requirements.

(c) The following need not be publicized in the Synopsis:

(1) See paragraph (b) of this section.

(2) Procurement of perishable subsistence supplies;

(3) Procurement of electric power or energy, gas (natural or manufactured), water or other utility services;

(4) Procurement (whether advertised or negotiated) which is of such urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than 15 calendar days from the date of transmittal of the synopsis or the date of issuance of the solicitation, whichever is earlier;

(5) Procurement to be made by an order placed under an existing contract;

(6) Procurement to be made from or through another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;

(7) Procurement of personal or professional services to be negotiated under § 18–3.204;

(8) Procurement from educational institutions to be negotiated under § 18–3.205; and

(9) Procurement in which only foreign sources are to be solicited.

§ 18–1.1003–3 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids, proposals or quotations, procurement offices should, when feasible, synopsize proposed procurements at least ten days before the issuance of solicitations, in accordance with § 18–1.1003–9(b)(8). If this is not feasible or practicable, purchasing offices shall synopsize

proposed procurements not later than the date of issuance of solicitations.

13. Section 18–1.1003–7 is revised to read as follows:

§ 18–1.1003–7 Information regarding specifications, plans, and drawings.

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained.

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement the synopsis shall contain notice of this fact.

(c) Notices of the situations in paragraphs (a) and (b) of this section shall be prepared in accordance with § 18–1.1003–9(e).

14. Section 18–1.1003–9 is revised to read as follows:

§ 18–1.1003–9 Preparation and transmittal.

(a) Each procurement office shall transmit a synopsis of proposed procurements. Synopses shall be:

(1) Issued in a timely manner in accordance with § 18–1.1003–2;

(2) Forwarded daily via airmail unless proximity of the purchasing office to Chicago, Ill., makes the use of surface mail more appropriate; and

(3) Addressed to:

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, IL 60680.

(b) Each synopsis shall be prepared as described below:

(1) Lines in the text commencing flush with left margin will not exceed 69 typewritten spaces. Double spaced lines will be used to describe each procurement action. Descriptions of different procurement actions will be distinguished by indenting the first five spaces.

(2) The first line of the text will state the number of the synopsis being sent. Synopses will be numbered consecutively by the purchasing office during the calendar year. New numerical series beginning with number one will start as of the first working day of January of each year. Double space between this line and the next line.

(3) The second line of the text will state name and location of the procurement office straight across the page, not to exceed 69 typewritten spaces. No abbreviations are to be used except for name of State. If more than one line is required for name and location of procurement office, double space and continue on subsequent line or lines if necessary, double spacing between each line. The address may include an attention phrase directed to an official by name or title.

(4) Four spaces below the preceding line entry (name and address of procurement office), indent five spaces. Using the codes set forth in § 18–1.1006, select the code applicable to the procurement action and insert as appropriate. If more than one classification is applicable to the procurement action, enter the code accounting for the largest dollar volume of the procurement. Two hyphens will be inserted after the code followed by a description of the supplies or services being procured stated in narrative paragraph form, double spaced, with each line commencing flush with the left margin. The length of the lines in the description will not exceed 69 typewritten spaces. The description will be clear, concise, and with a minimum number of words but sufficient for understanding by interested parties. It will include, as appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, citations of specification or drawing numbers, or other data. The Federal stock number will also be included where one has been assigned. In the absence of a Federal stock number, the service stock number will be included where one has been assigned. However, where more than six items are listed in the synopsis, stock numbers will be listed only for the six items of highest value. No abbreviations will be used in describing supplies or services, although standard abbreviations may be used in listing the quantity purchase reference numbers, specifications and bid opening date. Punctuation symbols will be used as in normal correspondence. Fractions on typewriter keys will not be used but fractions may be expressed by (number)/(number) e.g., 11/16, 1/4, 1/2.

(5) Following the complete description of the supplies or services which will end with a period, two hyphens will be used to set off the quantity to be procured. The quantity usually will be stated in numerals followed by the unit (abbreviations of units are permissible, e.g., lbs., ea., doz.). Whenever it is necessary to use "Indefinite Quantity," the description should include a statement as to the duration of the contract or period covered.

(6) The quantity will be followed by two hyphens before indicating the place of delivery as follows: "Deliveries to _____". Places of delivery should be stated specifically when there are not more than three destinations. When delivery points are more numerous, they will be grouped, if practicable, to show the general geographic area, e.g., "West Coast", "East Coast", or other appropriate regional description. Otherwise, the places of delivery will be stated as "Various Destinations" or "Destination(s) to be furnished".

(7) The places of delivery will be followed by two hyphens before commencing with the invitation for bids number or other purchase reference number, which may consist of letters, numerals, or abbreviations separated by hyphens or spaces. Invitation for bids numbers shall be identified and followed by the letter "B"; request for proposals and request for quotations numbers shall be followed by the letter "Q." Purchase reference numbers should not be broken or appear on one line carried over on the subsequent line, as the insertion of a hyphen for the carryover would change the reference number.

(8) Two hyphens will be used following the invitation for bids number or purchase reference number to set off the bid opening date or the advance notification date. If the synopsis is published prior to issuance of the invitation for bids or request for proposals or quotations, the synopsis shall include a statement to the effect that requests for such invitations, proposals or quotations should be received not later than 10 days from the date of publication of such synopsis in order to enable the procurement office to mail such invitation for bids, request for proposals, or request for quotations directly to the inquirer at the time of issuance thereof.

(9) On the last page of each issue the Commerce Business Daily publishes footnote information identified as "notes," which applies to specific procurement situations and which is used in repetitive instances in certain synopses appearing in the publication. Some existing "notes" are similar to the examples stated in paragraph (e) of this section. Where existing "notes" include exact wordage applicable to a given synposis, procurement offices may incorporate into the body of the letter a reference "See Note No. _____ on the last page of this issue * * *", in lieu of typing out the specific text of the particular entry. Any reference in the transmittal to certain standard "boilerplate" notices in the Commerce Business Daily will be made by title, when applicable. When the procurement situation of a given synopsis deviates from the standard "boilerplate" language, appropriate emphasis should be made in the text of the transmitted synopses.

NOTE: The purpose of using "notes" is to reduce the costs of preparing, transmitting and printing synopses. In order to promote cost reduction, contracting officers are urged to use references to "notes" in preparing synopses, when applicable. If an existing "note" does not cover a frequently recurring situation, contracting officers of each installation may request the Commerce Business Daily to establish a new "note." Requests shall be addressed to:

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, IL 60680.

From time to time a list of currently existing "notes" will be published in a U.S. Department of Commerce Bulletin.

(c) In addition to the foregoing, where the proposed procurement is to be effected in accordance with a small business set-aside (see § 18–1.706) or labor surplus area set-aside (see § 18–1.804), the synopsis shall (1) where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) under 100 percent small business set-aside," or (2) where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of _____ is being reserved for _____ (insert "small business" or "labor surplus

area" as appropriate) under a partial determination."

NOTE: To avoid confusion, separate letters should be sent covering proposed procurements which are under 100 percent small business set aside so that they will be placed in the Department of Commerce's Notice to Small Firm Section.

(d) Notices of specific procurements of research or development projects may state that only those sources which have been technically evaluated will be requested to submit proposals. When it is intended to award a contract based on earlier unsolicited proposals for research and development work the notice shall so state. The name of the proposed contractor shall be given and a brief description of the work proposed, provided that information submitted in confidence is not revealed. The notice may state that a contract is in process of being awarded and therefore, other proposals cannot be considered for this procurement.

(e) Certain procurements involve demands on the contractor which may make it virtually impossible for concerns not having special capabilities or qualifications to compete realistically for the contract. So as to alert such concerns to the need for special capabilities or qualifications and thus permit them to avoid improvident expenditures for bid preparation and the like, procurements for which (1) it is impracticable to distribute plans, drawings or specifications, (2) adequate plans, drawings or specifications to describe requirements are not available, (3) security clearance is required, or (4) other circumstances exist which should be brought to the attention of prospective sources for consideration in order to clearly indicate those qualifying factors affecting the procurement, should be so identified in the synopsis. Appropriate notations for inclusion in the synoposis, such as set forth below, should be devised to meet the needs of specific situations.

(1) Availability of specifications, plans or drawings:
It will be impracticable to distribute the applicable _____
(Insert "specifications," "plans," "drawings" or other appropriate words)
with the solicitation. This data may be examined or obtained at _____
(Be specific)

(2) Complete data not available:
Available specifications, plans, or drawings relating to the procurement described below do not fully provide all necessary manufacturing and construction details.

(3) Security requirements:
Security clearance will be required of all bidders or offerors (or of the successful bidder or offeror).

(4) Availability of background research report:
This procurement of basic research is a continuation of an effort conducted for the past _____. A research report containing findings to date is not
(Insert period)
available to the Government.

(5) Production requirements:
The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture.

(6) Standardization requirements:
This procurement is for technical equipment. A determination has been made in accordance with 10 U.S.C. 2304(a) (13) that standardization and interchangeability of parts are necessary in the public interest. Therefore, to achieve standardization, it is proposed that Requests for Proposals need be issued only to the following firms:

_____ _____
(Name of firm) (Address)

(f) Where the contracting officer determines in accordance with § 18-1.1003-6(a) that the names of firms to whom requests for proposals have been issued should be included in the synopsis. Such synopsis shall contain substantially the following statement:

Requests for Proposals have been issued to the following firms:

_____
(Name of firm)
_____
(Address)

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

15. Section 18-1.1005-1 is revised as follows:

§ 18-1.1005-1 Synopsis of contract awards.

(a) *General.* With the exception of awards to SBA using the authority of section 8(a) of the Small Business Act, awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding $25,000 in amount, shall be published in the Commerce Business Daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

(b) *Preparation and transmittal.*

(1) Procurement offices shall prepare and forward single copies of synopses of contract awards, using the same format as prescribed for synopses of proposed procurements in § 18-1.1003-9, to the address below, by airmail or ordinary mail whichever is considered most expeditious, before the close of business at the end of each week.

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, IL 60680.

(2) The synopsis of contract awards shall contain the following information:

(i) The name and address of procurement office;

(ii) The classification code applicable to the procurement action;

(iii) A clear and concise description of the supplies or services being procured, such description to be followed by the contract number and date and, in parentheses, by the applicable number of the invitation for bids or request for proposals;

(iv) The quantity of each item;

(v) The dollar amount of the award;

(vi) The name, size status ((S) for small business and (L) for large business), and the full name of the contractor; and full address of the contractor;

(vii) For f.o.b. destination procurement when total shipments from a point of origin to a point of destination will exceed 200,000 pounds and destinations are firm—

(*a*) Origin point of shipment when different from (vi) above;

(*b*) Destination of shipment; and

(c) Scheduled delivery period (beginning and ending dates); and

(viii) When requested by the prime contractor, a statement of the industries, crafts, processes, or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

(3) Procurement offices shall forward, by mail, one copy of the synopsis of contract award as prepared in § 18-1.1005-1(b) to the Procurement Office, NASA Headquarters (Code KD-2) and a copy to the Public Affairs Office of the installation.

16. Section 18-1.5204 is revised to read as follows:

§ 18-1.5204 Contract provisions.

(a) Specific system safety requirements which are to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract schedule in accordance with § 18-1.5202 (a) (2) and (b) (3).

(b) Any unique facility safety or health requirements, which are in addition to the general provisions of the "Safety and Health" clause required herein, shall be prescribed as required by § 18-1.5202(b) (3).

(c) The following clause shall be included in:

(1) All negotiated contracts of $1 million or more, unless the contracting officer makes a written determination in accordance with § 18-1.5202(b) that, under the circumstances of the procurement, the clause is not necessary;

(2) All construction, repair, or alteration contracts in excess of $10,000;

(3) All contracts having, within their total requirement, construction, repair or alteration tasks in excess of $10,000; and

(4) In any procurement regardless of dollar amount when: (i) the deliverable contract end items are of a hazardous nature; (ii) during the life of the contract it can reasonably be expected that hazards will be generated within the

operational environment, and the contracting officer determines that the hazards in the procurement warrant the inclusion of the clause.

(d) This clause may, however, be excluded from any contract which is subject to either the Walsh-Healy Public Contracts Act (§ 18–12.601) or the Services Contract Act of 1965 (§ 18–12.1004) and in which the application of either Act and any regulations thereunder constitute adequate safety and health protection.

SAFETY AND HEALTH (JUNE 1972)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the Schedule of the contract, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor is subject to (i) all applicable Federal, State, and local laws, regulations, ordnances, codes, and orders relating to safety and health in effect on the date of this contract; and (ii) shall comply with the Safety and Health Standards, specifications and issuances, reporting requirements, and provisions as set forth in the Schedule of the contract.

(b) Further, the Contractor shall take or cause to be taken such other safety and health measures as the Contracting Officer shall direct. To the extent that the Contractor is entitled to an equitable adjustment under the terms and conditions of this contract, or any other obligations of the parties, such equitable adjustment shall be determined pursuant to the procedures of the clause of this contract entitled "Changes": *Provided,* That no adjustment shall be made under this clause for any change for which an equitable adjustment is expressly provided under any other provision of this contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or his representative, any accident or incident or exposure resulting in fatality, disabling occupational injury or occupational disease or contamination of property beyond stated acceptable threshold limits set forth in the Schedule of the contract, or property loss of $10,000 or more arising out of work performed under this contract: *Provided, however,* The Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the Contractor shall comply with any illness, incident, and injury experience reporting requirements set forth in the Schedule of the contract. The Contractor will investigate all such work related incidents or accidents to persons and property to the extent necessary to positively conclude what cause or causes resulted in said accident or incident, and furnish the Contracting Officer with a report, in such form as the Contracting Officer may require, of the investigative findings, together with proposed and/or completed corrective actions.

(d) (1) The Contracting Officer may, from time to time, notify the Contractor in writing of any noncompliance with the provisions of this clause and may specify corrective actions to be taken. The Contractors shall, after receipt of such notice, immediately take corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with (d) (1) above, the Contracting Officer may invoke the provisions of the clause in the contract entitled "Stop Work," or may invoke whatever other rights are available to the Government under the terms and conditions of this contract or at common law, to remedy such failure or refusal to institute prompt corrective action.

(e) The Contractor (or subcontractor or supplier) shall cause the substance of this clause including this paragraph (e) and any applicable Schedule Provisions, with appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which: (i) Amount to $1 million or more unless the Contracting Officer makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of $10,000; or (iii) the Contractor, regardless of dollar amount, determines that hazardous materials or operations are involved.

(f) The Contractor agrees that authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed to determine the adequacy of the Contractor's safety and health measures under this clause.

PART 18–2—PROCUREMENT BY FORMAL ADVERTISING

1. Section 18–2.201–1 (a) and (b) is revised to read as follows:

§ 18–2.201–1 Supply and service contracts.

(a) *Supply and service contracts, including construction.* For supply and service contracts, including construction, invitation for bids shall contain the following information if applicable to the procurement involved.

(1) Invitation number.

(2) Name and address of issuing installation.

(3) Date of issuance.

(4) Date, hour, and place of opening. (Prevailing local time shall be used. See § 18–2.202–1 concerning bidding time.) The exact location of the bid depository, including the room and building numbers, and a statement that hand-carried bids must be deposited therein.

(5) Number of pages.

(6) Requisition or other purchase authority and appropriation and accounting data.

(7) A description of supplies or services to be furnished under each item, in sufficient detail to permit full and free competition. Reference to specifications shall include identification of all amendments or revisions thereof, applicable to the procurement and dates of both the specifications and the revisions (see § 18–1.1201(a)). Such description shall comply with Subpart 18–12, relating to specifications.

(8) The time of delivery or performance (see § 18–1.305).

(9) Permission, if any, to submit telegraphic bids (see § 18–2.202–2).

(10) Permission, if any, to submit alternate bids, including alternate materials or design and the basis upon which award will be made in such case.

(11) The "Patent Royalties" clause set forth in § 18–9.102–2(f)(1).

(12) Bid guarantee, performance bond, and payment bond requirements, if any (see Subpart 18–10.1, and § 18–16.805). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provisions required by § 18–10.102–4.

(13) Any offer by the Government to provide Government production and research property for the performance of the contract, and any special provisions relating thereto (see Subpart 18–13.3).

(14) Description of the procedures to be followed in obtaining permission to use Government production and research property and in eliminating competitive advantage from the rent-free use thereof (see Subparts 18–13.4 and 18–13.5).

(15) When considered necessary by the contracting officer, a requirement that all bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other preaward processing. To accomplish the foregoing, a paragraph substantially as follows may be included in the schedule or other appropriate place in the Invitation for Bids:

BIDS ACCEPTANCE PERIOD (JULY 1965)

Bids offering less than _____ days for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected.

In construction contracts, a 30-day bid acceptance period is normal, but may be less, and in unusual circumstances a period of 60 days may be specified.

(16) In unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being purchased or for some other special reason, a statement of such qualifications.

(17) Any authorized special provisions, necessary for the particular procurement, relating to such matters as patent licenses, liquidated damages, "Buy American Act," etc.

(18) Any additional contract clauses, provisions or conditions required by law or this chapter.

(19) Any applicable wage determinations of the Secretary of Labor (in the case of procurements of supplies which also involve the performance of construction, alteration or repair work, see § 18–12.402; in the case of service contracts, see Subpart § 18–12.11).

(20) A statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provision for escalation as factors for evaluation.

(21) If the schedule contains a price escalation clause, the following provision:

Evaluation of bids subject to escalation. Notwithstanding the provisions of the clause entitled "Price Escalation," bids shall be evaluated on the basis of quoted prices without the allowable escalation being added. Bids which provide for a ceiling lower than that stipulated in the clause will also be evaluated on this basis. Bids which provide for escalation that may exceed the maximum escalation stipulated in the clause, or which limit or delete the downward escalation stipulated in the clause shall be rejected as nonresponsive. (July 1968)

(22) Where Standard Form 33 (Solicitation, Offer, and Award) is not used and where not contained elsewhere in the invitation, a provision as follows:

ORDER OF PRECEDENCE (JULY 1968)

In the event of an inconsistency between provisions of this Invitation for Bids, the inconsistency shall be resolved by giving precedence in the following order: (a) The Schedule; (b) Bidding Instructions, Terms and Conditions of the Invitation for Bids; (c) General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the Specifications.

(23) When considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the invitation for bids:

AFFILIATED BIDDERS (JULY 1968)

(a) Business concerns are affiliates of each other when either directly or indirectly

(i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with his bid an affidavit containing information as follows:

(i) Whether the bidder has any affiliates;

(ii) The names and addresses of all affiliates of the bidder; and

(iii) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of his affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

Failure to furnish such an affidavit may result in rejection of the bid.

Failure to furnish such an affidavit shall be treated as a minor informality or irregularity (see § 18–2.405).

(24) Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference (see § 18–1.1203).

(25) Where Standard Form 33 (Solicitation, Offer, and Award) is not used, a requirement for inclusion of "county" as part of bidder's address will be inserted.

(26) A provision covering the required source for jeweled bearings (see § 18–1.315).

(27) In accordance with paragraph 504 of Appendix E, a provision concerning progress payments.

(28) Information regarding bidding material which shall include Instructions to Bidders, the Bid Form, the Contract Form, the General Provisions, any conditions, the specifications and drawings (see § 18–1.1203).

(29) Where Standard Form 33 (Solicitation, Offer, and Award) is not used, a provision covering parent company and employer identification number (see § 18–1.114).

(30) If the contract is to be conditioned on the availability of funds, a clear statement of such condition (see § 18–1.318).

(31) [Reserved]

(32) In accordance with § 18–1.1208, a provision concerning the use of new material (except in the case of construction) and a provision concerning the use of former Government surplus property.

(33) The Certificate of Independent Price Determination as required by § 18–1.115.

(34) Quality assurance requirements applicable to the procurement in accordance with Subpart 18–1.50.

(35) [Reserved]

(36) A statement that prospective bidders may submit inquiries by writing or calling (collect calls not accepted) (insert name and address; telephone area code, number, and extension).

(37) When using Standard Form 33, on the face thereof or on a cover sheet, a brief description of the items being procured, unless the contracting officer considers such to be unnecessary or impractical.

(38) A statement that prospective bidders should indicate in the bid the address to which payment should be mailed, if such address is different from that shown for the bidder. (Contracting officers shall include this information in all resultant contracts which are to be administered by a Defense Contract Administration Services Regional Office.)

(39) A provision covering the required source for aluminum (see § 18–1.327).

(40) [Reserved]

(41) Time of delivery or performance requirements (see § 18–1.305).

(42) A statement that the "Contract Work Hours Standards Act—Overtime Compensation" clause is not applicable to contracts if the aggregate amount of the bid is $2,500 or less (see § 18–12.302–2).

(43) [Reserved]

(44) In procurements involving total set-asides for small business, the Notice set forth in § 18–1.706–5(c).

(45) In procurements involving partial set-asides for small business, the notice requirements as set forth in § 18–1.706–6(c).

(46) In procurements involving partial set-asides for labor surplus area concerns, the notice requirements as set forth in § 18–1.804–2(b).

(47) When the procurement involves a set-aside for small business concerns, the following provision:

This is a _____% set-aside for small business concerns.

(48) When the procurement involves a set-aside for labor surplus area concerns, the following provision:

This is a _____% set-aside for labor surplus area concerns.

(49) If the resulting contract is expected to exceed $100,000, the "Contractor and Subcontractor Certified Cost or Pricing Data" clause (see § 18–3.807–4).

(50) Statement that the selected contractor will or will not require access to classified information (see NASA Management Issuance 1650.1, paragraph 12).

(51) Statement that special instructions for waived inventions will not be applied (see § 18–9.101–3(a)).

(52) If leases are involved, the "Facilities Nondiscrimination" clause set forth in §§ 18–1.350–2 and 18–1.350–4.

(53) If the "Equal Employment" clause is not applicable to the proposed procurement (see § 18–12.804), or if the proposed procurement is exempted from the clause (see § 18–12.805), include a statement substantially as follows:

Representation No. 6, "Equal Opportunity" of Standard Form 33 is not applicable to this Procurement. (July 1965)

(54) A reference promintently placed in the invitation to paragraph 8 entitled, "Late Offers and Modifications or Withdrawals," of Standard Form 33A.

(55) Unless exempted by § 18–12.805 from inclusion of the Equal Opportunity clause, the representations set forth in § 18–12.806(b).

(56) Unless exempted by § 18–12.805 from inclusion of the Equal Opportunity clause on the face or cover sheet of the solicitation, these notices:

I. Note the affirmative action requirement of the Equal Opportunity clause which may apply to the contract resulting from this solicitation.

II. Note the certification of nonsegregated facilities in this solicitation. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (October 1971)

(57) In accordance with § 18–12.806 (a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein.

(58) Invitations for Bid which will result in the placement of rated orders or Authorized Controlled Material Orders shall contain the following statement:

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a (DX or DO as appropriate) rating or DMS allotment number (as appropriate) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1.

(b) *Supply and service contracts, excluding construction.* For supply and service contracts, excluding construction, invitation for bids shall contain the following in addition to the information required by paragraph (a) of this section, if applicable to the procurement involved.

(1) Discount provisions (see § 18–2.407–3).

(2) The quantity of supplies or services to be supplied under each item, and any provision for extent of quantity variation.

(3) Any requirement for prior testing and qualification of a product.

(4) Where needed for the purpose of bid evaluation, pre-award surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be

furnished or where the services will be performed. Where it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or where the Government requires the information, bidders will be required to state (i) the full address of principal producing facilities (if designation of such address is not feasible, a full explanation will be required), and (ii) names and addresses of owner and operator if other than bidder.

(5) Place and method of delivery (see Subpart 18–1.13 and § 18–2.202–3).

(6) Preservation, packaging, packing, and marking requirements, if any (see § 18–1.1204).

(7) Place, method, and conditions of inspection.

(8) If no award will be made for less than the full quantities advertised, a statement to that effect.

(9) If award is to be made by specified groups of items or in the aggregate, a statement to that effect.

(10) If the contract is to include option provisions, a clear statement of such provisions (see Subpart 18–1.15).

(11) Any applicable requirements for samples or descriptive literature (see §§ 18–2.202–4 and 18–2.202–5).

(12) When minimum size of shipment requirements are appropriate, a provision substantially as set forth in § 18–2.202–3(b)(2).

(13) When the shipping weights (and dimensions if applicable) of an item are a factor in determining transportation costs for bid evaluation, a provision substantially as set forth in § 18–2.202–3(b)(3).

(14) If the procurement includes the furnishing of electrosensitive initiating devices (squibs) or any other item or component designated in the procurement request as a potentially hazardous item, the requirements set forth in § 18–1.351.

(15) The number of copies of sellers' invoices desired, including original, if more or less than four.

(16) Any requirement for preproduction samples or tests, including a statement that the Government reserves the right to waive the requirement as to those bidders offering a product which has been previously procured or tested by the Government, and a statement that bidders offering such products, who wish to rely on such prior procurement or tests, must furnish with the bid information from which it may be clearly established that prior Government approval is presently appropriate for the pending procurement.

(17) In accordance with § 18–1.1208, a provision concerning the use of new material.

(18) [Reserved]

(19) When the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see § 18–2.407–5(c)), a provision substantially as follows:

EVALUATION OF BIDS (JULY 1965)

In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $50 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combination of items which result in the lowest aggregate price to the Government, including such administrative costs.

(20) If the contract involves performance of services on a Government installation, the following provision.

SITE VISIT (JULY 1968)

Bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for withdrawal of a bid after opening or for a claim after award of the contract.

(21) To insure timely distribution of Material Inspection and Receiving Reports (DD Form 250), include distribution instructions in the Schedule or as an attachment to the contract (see Appendix I).

(22) Where liquidated damages are to be assessed, insert the clause as prescribed by § 18–7.105–5 (see § 18–1.310).

(23) In the procurement of supplies where the award may amount to $1 million or more, include the provision relating to preaward Equal Opportunity Compliance reviews set forth in § 18–12.802–4(d).

2. Section 18–2.303–4 is revised to read as follows:

§ 18–2.303–4 Telegraphic bids.

A late telegraphic bid received before award shall not be considered for award, regardless of the cause of the late receipt, including delays caused by the telegraph company, except for delays due to mishandling on the part of the Government in its transmittal to the office designated in the invitation for bids for the receipt of bids, as provided for bids submitted by mail (see § 18–2.302).

3. Section 18–2.405 is revised to read as follows:

§ 18–2.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one which is merely a matter of form, and not of substance, or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The contracting officer shall either give the bidder an opportunity to correct any deficiency resulting from a minor informality or irregularity in a bid or shall waive such deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include:

(a) Failure of bidder to return the number of copies of signed bids required by the invitation for bids;

(b) Failure of bidder to furnish required information concerning the number of his employees;

(c) Failure of bidder to sign his bid, but only if—

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission of a bid guarantee with bid, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself; or

(2) The firm submitting the bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature, and submits evidence of such authorization and the bid carries such a signature;

(d) Failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bid and the bidder submitted a bid thereon, or

(2) The amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon, or the relative standing of bidders, such as an amendment correcting a typographical mistake in the name of the NASA installation.

(e) Failure to execute the certifications with respect to Equal Opportunity and Affirmative Action Program, as set forth in § 18–12.806(b)(1)(ii) and § 18–12.806(b)(2).

PART 18–3—PROCUREMENT BY NEGOTIATION

1. Section 18–3.305–4 is revised to read as follows:

§ 18–3.305–4 Advance payments under the letter of credit procedure.

When requesting authorization to provide advance payment provisions in a contract with a nonprofit institution (including an educational institution), insert the appropriate words and phrases in the form set forth below and submit to the Director of Procurement, NASA Headquarters for approval.

FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS

1. I hereby find that:

a. The National Aeronautics and Space Administration and _____

_____

(Contractor)

have entered (propose to enter) into negoti-

ated Contract No. _____ for _____
_____
(Purpose of the contract)

(Summary of the specific facts and significant circumstances concerning the contract and Contractor, which, together with the other findings, will clearly support the determinations below.)

b. Advance payments in an amount not to exceed $_____, are required by the Contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will benefit the Government.

d. The "Contractor Financing by Letter of Credit" clause contains appropriate provisions for the protection of the Government's interest. This includes provisions that the Government will have a lien, paramount to all other liens, upon (i) the supplies contracted for, and (ii) any material or property acquired for the performance of the contract. Such security is deemed to be adequate.

e. The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the Contractor.

DETERMINATION

2. Upon the basis of the above findings, I hereby determine that the making of advance payments, without interest, is in the public interest.

AUTHORIZATION

Advance payments in the amount of $_____ are hereby authorized pursuant to 10 U.S.C. 2307. Outstanding payments may at no time exceed the unpaid contract price.

_____
(Director of Procurement)

Date: _____

Instructions:

1. A request for advance payment provisions will be prepared in final form (original and one official file copy, NASA Form 1267) and forwarded to the Procurement Office, NASA Headquarters (Code KDP-3) for submission to the Director of Procurement for approval.

2. A separate "Findings, Determination and Authorization for Advance Payments" will be prepared for each request for authorization of advance payments. Requests to increase the amount of advance payments involving modifications, supplemental agreements or extensions to an existing contract on which advance payments previously have been authorized will clearly indicate the amount of the increase required, the previous amount authorized, and the new total.

3. Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307.

4. 10 U.S.C. 2307 will be the statutory authority cited for authorizing advance payments.

2. Sections 18-3.307 and 18-3.308 are revised to read as follows:

§ 18-3.307 Filing of determinations and findings.

A copy of each determination and findings shall be filed with the contract to which it applies. Each determination and findings made pursuant to the authority of sections 2304(a) (11) through (16), 2306(c), and 2307(c) of title 10 U.S.C. shall be retained in the files of the NASA installation in accordance with instructions contained in Supplement No. 2 of this chapter.

§ 18-3.308 Retention of data with respect to negotiation.

In each case where a purchase or contract is negotiated, except under § 18-3.202 to § 18-3.206 inclusive, data with respect to the negotiation shall be preserved in the files of the NASA installation in accordance with instructions set forth in Supplement No. 2 to this chapter. With respect to the retention of data to support small purchases, see § 18-3.603(f).

3. Section 18-3.406-1 is revised to read as follows:

§ 18-3.406 Other types of contracts.

§ 18-3.406-1 Time and materials contracts.

(a) *Description.* The time and materials type of contract provides for the procurement of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates shall include wages, overhead, general and administrative expense, and profit), and (2) material at cost, and, in addition, where appropriate, material handling costs as a part of material cost. Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Part 18-15. Such material handling cost should include only costs clearly excluded from the labor hour rate. This type of contract does not afford the contractor any positive profit incentive to control the cost of materials or to manage his labor force effectively.

(b) *Application.* The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Particular care should be exercised in the use of this type of contract since its nature does not encourage effective management control. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of supplies; (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance or overhaul work; and (4) work to be performed in emergency situations.

(c) *Limitation.* Because this type of contract does not encourage effective cost control and requires almost constant Government surveillance, it may be used only after determination that no other type of contract will suitably serve. This type of contract shall establish a ceiling price which the contractor exceeds at his own risk. The contracting officer shall document the contract file to show valid reasons for any change in the ceiling and to support the amount of such change.

(d) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, the contract may provide for charging material on a basis other than at cost if:

(1) The total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed twenty percent (20%) of the estimated contract price;

(2) The material to be so charged is identified in the contract;

(3) No element of profit on material so charged is included in the profit in the fixed hourly labor rates; and

(4) The contract provides that the price to be paid for such material shall be on the basis of an established catalog or list price, in effect when material is furnished, less all applicable discounts to the Government: *Provided,* That in no event shall such price be in excess of the contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

4. Section 18-3.409 is revised to read as follows:

§ 18-3.409 Indefinite delivery type contracts.

(a) One of the following indefinite delivery type contracts may be used for procurement where the exact time of delivery is not known at time of contracting.

(b) Depending on the situation, indefinite delivery type contracts may provide for (1) firm fixed prices, (2) price escalation, (3) price redetermination, or (4) prices established in accordance with paragraph (c) of this section.

(c) When indefinite delivery type contracts, whether competitively awarded or not, are priced on the basis of catalog or market prices, the price to be paid may be determined by establishing an adjustment factor for application to the price in industrywide pricing guides or manufacturer's price catalogs. Normally, the adjustment factor will be a fixed percentage discount for application to the price in effect on the date of each order.

(d) When it is desired to authorize the use of the fast pay procedure for orders not in excess of $2,500, the special data required by § 18-3.606-3(b) shall be included in the contract. The clause in § 18-3.606-3(b)(4) shall be modified for this purpose to refer to delivery orders and to the appropriate contract clause of the indefinite delivery type contract for the preparation of invoices.

5. Sections 18-3.409-1, 18-3.409-2, 18-3.409-3, and 18-3.409-4 are added.

§ 18-3.409-1 Definite quantity contracts.

(a) *Description.* This type of contract provides for a definite quantity of specified supplies or for the performance of

specified services for a fixed period, with deliveries or performance at designated locations upon order.

(b) *Applicability.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specified period and are regularly available or will be available after a short leadtime. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

§ 18–3.409–2 Requirements contracts.

(a) *Description.* This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds are obligated by each order and not by the contract itself.

(b) *Applicability.* A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need be ordered only after actual needs have materialized;

(3) Where production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(4) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(5) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item of service is commercial or modified commercial in type and when a recurring need is anticipated.

§ 18–3.409–3 Indefinite quantity contracts.

(a) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific supplies or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the supplies or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. To assure that the contract is binding, the minimum must be more than a nominal quantity; yet it should not exceed the amount which the Government is fairly certain to order. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds for other than the stated minimum quantity are obligated by each order and not by the contractor itself.

(b) *Applicability.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need be ordered only after actual needs have materialized;

(3) The obligation of the Government is limited; and

(4) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

§ 18–3.409–4 Orders.

(a) Orders placed under indefinite delivery type contracts shall contain the following information, consistent with the contract terms:

(1) Date of order;

(2) Contract number and order number;

(3) Item number and description, quantity ordered, and contract price;

(4) Delivery or performance date;

(5) Place of delivery or performance (including consignee);

(6) Packaging, packing, and shipping instructions, if any;

(7) Accounting and appropriation data; and

(8) Any other pertinent information.

(b) Orders may be placed by means of written telecommunications media, if:

(1) The contract provides for the placement or orders by such means,

(2) The orders are approved by the contracting officer prior to transmission, and

(3) The procurement office retains all contract administration functions.

§ 18–3.450 [Amended]

6. Section 18–3.450(e) is revised to read as follows:

* * * * *

(e) *Contract clauses.* (1) Fixed-price incentive contracts with cost incentives will include either the "Incentive Price Revision (Firm Target)" clause in § 18–7.108–1, or the "Incentive Price Revision (Successive Targets)" clause in § 18–7.108–2, as appropriate.

(2) Cost-plus-incentive-fee contracts with cost incentives will include the "Allowable Cost, Incentive Fee, and Payment" clause in § 18–7.203–4(b). In addition, the "Alteration in Contract" clause in § 18–7.105–1 will be included, followed by the clause set forth below which may be modified by the contracting officer if necessary to meet the requirements of a particular procurement:

TYPES OF CONTRACTS

For the purpose of this cost-plus-incentive-fee contract, certain terms in this contract have the following meanings:

(a) "Estimated Cost" means "target cost" except in the following instances:

(1) Where the term first appears in the second sentence of the clause of this contract entitled "Changes."

(2) Wherever it appears in the clause of this contract entitled "Limitation of Cost."

(3) Wherever it appears in the clause of this contract entitled "Estimated Cost and Fixed-Fee."

(4) If this contract is incrementally funded, wherever the term appears in the clause "Limitation of Government's Obligation."

(5) If the "Government Property" clause is used, wherever the term appears.

(b) "Fixed-Fee" means "Fee."

(c) "Allowable Cost, Fixed-Fee, and Payment" means "Allowable Cost, Incentive-Fee, and Payment."

Where a contract is not solely of the cost-plus-incentive-fee type (e.g., one which also provides for a fixed-fee), the first sentence of the clause shall be changed to read as follows:

"For the purpose of the cost-plus-incentive-fee portions of this contract, certain terms in this contract have the following meanings":

(3) Cost-plus-award-fee contracts will include the "Allowable Cost, Fixed-Fee and Payment" clause in § 18–7.203–4(a), modified in accordance with § 18–7.203–4(c)(6). In addition, the "Alteration in Contract" clause in § 18–7.105–1 will be included, followed by the sentence set forth below which may be modified by the contracting officer if necessary to

meet the requirements of a particular procurement:

"For the purpose of this cost-plus-award-fee contract, the term 'Fixed-Fee' in this contract means 'Fee'."

Where a contract is not solely of the cost-plus-award-fee type (e.g., one which also provides for a fixed-fee), the sentence shall be changed to read as follows:

"For the purpose of the cost-plus-award-fee portions of this contract, the term 'Fixed-Fee' in this contract means 'Fee'."

* * * * *

§ 18–3.450 [Amended]

7. Section 18–3.450(g) is deleted.

8. Section 18–3.501 is revised to read as follows:

§ 18–3.501 Preparation of request for proposals or request for quotations.

(a) Forms used for requesting proposals or quotations on negotiated procurements shall be in accordance with Part 18–16 (see also § 18–1.309).

(b) Generally, requests for proposals or quotations shall be in writing. Solicitations shall contain the information necessary to enable a prospective offeror to prepare a proposal or quotation properly. Written requests shall be as complete as possible and normally should contain the following information if applicable to the procurements involved:

(1) Request for proposals or request for quotations number and date of issuance;

(2) Title and/or number of the program or project (e.g., "Apollo S–IC Instrumentation");

(3) Name and address of procurement office issuing the request; identification of the individual responsible for supplying additional information or answering inquiries; complete address of person to receive proposals; number of copies of proposal required to be submitted;

(4) Closing date and time;

(5) With respect to late proposals or modications, include the provision set forth in § 18–3.802–4(c) (this provision will be appropriately modified in the case of request for quotations); where Standard Form 33 (Solicitation, Offer, and Award) is used, the following notice shall be prominently set forth in the request for proposals:

NOTICE TO OFFERORS—LATE OFFERS AND MODIFICATIONS (JULY 1968)

Paragraph 8, "Late Offers and Modifications or Withdrawals," of Standard Form 33A does not apply to this solicitation. See the special provision in this solicitation entitled, "Late Proposals."

(6) Requirement for stipulation of a time within which the Government may accept the proposal;

(7) Number of pages and list of enclosures;

(8) Item description or statement of work;

(9) Type of contract contemplated (see § 18–3.803);

(10) Requirement for statement on contingent fees (see § 18–1.506(c));

(11) Statement on Buy American Act (§ 18–6.104–2) and requirement for Buy American Certificate (§ 18–6.104–3);

(12) Requirement that the offeror state whether he operates as an individual, partnership or corporation (showing state where incorporated);

(13) Statement that the selected contractor will or will not require access to classified information (see NASA Management Instruction 1650.1, "Industrial Security Policies and Procedures");

(14) Time of delivery or performance requirements (see § 18–1.305);

(15) Requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror, when it is reasonably expected that such facilities will be used in the performance of the contract;

(16) Place and method of delivery;

(17) Provisions to be made for reliability assurance (see § 18–1.5105);

(18) A description of the quality assurance system to be used (see § 18–1.5003);

(19) Place, method, and conditions of inspection, test, and acceptance (see § 18–14.101 et seq.);

(20) Identification of the special factors, such as Government cost or other expenditures, including reliability and maintainability requirements, which will be considered in evaluating the proposals, together with an indication of the relative importance to be given these factors, where applicable (see § 18–3.804–2);

(21) Method and format of price quotation desired (fixed-price or cost type, if known at the time), including a reference to the necessity for cost or price breakdown (see § 18–3.501(c)(2)(ix));

(22) Description of information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost and price information (see Subparts 18–3.8 and 18–3.9, Subpart 18–9.1 and Part 18–23);

(23) Information as to requirements for Certificate of Current Cost or Pricing Data (see § 18–3.807–3);

(24) Statement that special instructions for waived inventions will not be applied, or requirement for statement as to waived inventions (see § 18–9.101–3(a) or § 18–9.101–3(e));

(25) Notice to offerors of the Government's desires as to the use of incentive considered applicable, objectives of the incentive performance goals, schedule milestones, critical delivery parameters, and similar information intended to elicit contractor response to the procurement objectives but without premature disclosures prejudicial to the Government's prenegotiation position (see § 18–3.450);

(26) Notice to offerors of the possibility that award may be made without discussion of proposals (see § 18–3.102);

(27) The Certification of Independent Price Determination required by § 18–1.115;

(28) Contract clauses required by law or this chapter, copies of applicable standard or NASA forms which will form a part of the contract, and any report forms or handbooks required to be used or followed in complying with the terms of the contract;

(29) Directions for obtaining copies of any documents, such as plans, drawings and specifications, which have been incorporated by reference (see § 18–1.1201);

(30) Instructions for disposition of drawings and specifications supplied with the request for proposals or request for quotations;

(31) Statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities which offerors must possess (see § 18–3.804);

(32) Instruction reflecting desirability of a separation between the contractor's "Business Management Quotation" and "Technical Quotation." For evaluation purposes separate quotations, where time permits, should be received; therefore, the format should be flexible enough to permit separate requirements (see § 18–3.802–4(a));

(33) List of any Government-furnished property (showing location and condition) including Government-owned tooling, which will be furnished for the performance of the contract, and any special provisions relating thereto;

(34) Requirement that information be furnished with respect to any Government-owned facilities, industrial equipment, or special tooling intended to be used in the performance of the contract, the value thereof, identification of the Government contract under which acquired, rental provisions, and other relevant information;

(35) Requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," "Equipment," etc. (see § 18–13.5105 for format);

(36) Requirement that additional special test equipment to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown;

(37) Clear statement of option provisions (see Subpart 18–1.15 and § 18–12.1050);

(38) Requirement for the contractor to furnish data, when the requirement for data is known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract (see Subpart 18–9.2 for detailed instructions and required clauses; see also § 18–3.852–3);

(39) Special provisions necessary for the particular procurement, relating to such matters as patents, data, copyrights (see Part 18–9); liquidated damages (see § 18–1.310); progress payments (see § 18–7.104–35);

(40) Requirement for information to be furnished on management engineering and consultant services specified in § 18–4.5205–2;

(41) When NASA Financial Management Reporting is to be applicable to the procurement (§ 18–7.104–53), offerors will be advised that the successful contractor will be required to report contract cost/manpower on a regular basis as set forth in NASA Handbook 9501.2A, "Procedures for Contractor Reporting

Correlated Cost and Performance Data."

(42) A statement as follows:

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS (NOVEMBER 1965)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper and bindings and expensive visual or other presentation aids are neither necessary nor desired.

The above statement shall be appropriately modified where included in a request for quotations;

(43) If the contract is to be conditioned on the availability of funds, a clear statement of such condition (see § 18-1.318);

(44) Requirement for submission of a proposed "Make or Buy" program (see Subpart 18-3.9);

(45) In accordance with the policy of § 18-1.304-2(d), the following statement and legend shall be included in all requests for proposals:

The proposal submitted in response to this request may contain technical data which the offeror, or his subcontractor offeror, does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data may be so restricted, provided the offeror marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend:

Technical data contained in pages _____ of this proposal shall not be used or disclosed, except for evaluation purposes, provided that if a contract is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose any technical data obtained from another source without restriction.

The Government assumes no liability for disclosure or use of unmarked data and may use or disclose the data for any purpose. (October 1969)

(46) Requests for Proposal which will result in the placement of rated orders or Authorized Controlled Material Orders (see § 18-1.307) shall contain the following statement.

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a (DX or DO as appropriate) rating or DMS allotment number (as appropriate) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1.

(47) [Reserved]

(48) If leases are involved, the facilities nondiscrimination paragraph set forth in § 18-1.350-4;

(49) When the use of automatic data processing equipment is applicable to the procurement (see § 18-3.804-2(c)(2) and Subpart 18-3.11), inclusion of the following provision:

The Government reserves the right to require the preparation and submission of feasibility and lease versus purchase studies by the successful contractor if the use of automatic data processing equipment is proposed.

(50) [Reserved]

(51) Statement as to requirement for jewel bearings (see § 18-1.315);

(52) Requirements set forth in § 18-1.351, if the procurement includes the furnishing of electro-sensitive initiating devices (squibs) or any other item or component designated in the procurement request as a potentialy hazardous item;

(53) Requirement for representation as to small business and statement whether or not the offeror has previously been denied a Small Business Certificate (see § 18-1.903);

(54) Instructions that offeror promptly acknowledge receipt of the request for proposal or request for quotation and advise whether he intends to submit a proposal or offer;

(55) Statement that this request for proposal or request for quotation does not commit the Government to award a contract, the Government reserving the right to reject any or all proposals, or to negotiate separately with any source considered qualified; and that the contracting officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed procurement (see § 18-3.801);

(56) Statement that this request for proposal or request for quotation does not commit the Government to pay any costs incurred in the submission of the quotation or in making necessary studies or designs for the preparation thereof, nor to procure or contract for services or supplies. Further, no costs may be incurred in anticipation of a contract with the exception that any such costs incurred at the proposer's risk may later be charged to any resulting contract to the extent that they would have been allowable if incurred after the date of the contract and to the extent authorized by the contracting officer (see § 18-15.205-30);

(57) The following provision shall be included in all requests for proposals to be evaluated pursuant to NASA Source Evaluation Board procedures, when award of a cost-reimbursement type contract (with or without incentive arrangements) is contemplated:

Once the prospective contractor has been selected, the estimated costs submitted with its proposal shall not be subject to increase, except for changes in certified cost or pricing data submitted with the proposal, unless changes are made in the requirements of the request for proposals. Furthermore, increases shall be considered only in regard to those requirements that are actually affected by the changes (whether the changes result in an increase or decrease in the requirements and whether they are initiated by the Government or the offeror), and then only to the extent that such changes are specifically identified and justified. Negotiation of such increases will be conducted separately, and not as part of a combined overall negotiation of the estimated cost and fee of the proposed contract. (February 1967)

(58) A statement requesting prospective offerors to list the names and telephone numbers of persons authorized to conduct negotiations;

(59) Requirements for performance and payment bonds (see Subpart 18-10.1).

(60) Requests for proposals and requests for quotations for contracts in excess of $1 million, where the conduct of research, experimental, design, engineering, or developmental work is contemplated, and in such contracts of lesser dollar value if deemed appropriate by the contracting officer and the technology utilization officer of the installation concerned, shall contain the following requirement:

PLAN FOR NEW TECHNOLOGY REPORTING (JUNE 1966)

Each offeror shall submit with his proposal a plan which he proposes to use in carrying out the provisions of the "New Technology" clause of the contracts. The plan shall describe:

(a) The size and nature of the scientific and technological efforts in which inventions, discoveries, improvements and innovations may be expected. Include the scientific disciplines involved in these efforts, and summarize the technical problems to be solved which you feel are most likely to generate new technology.

(b) The emphasis given to new technology reporting by the top levels of management of the organization, and the specific means (e.g., company directives, newsletters, briefings) to be used to communicate such emphasis to the organization.

(c) The organizational placement and qualifications of (i) the individual(s) assigned as Company Technology Utilization/New Technology Representative(s), and their staffs, and of (ii) any others having substantial and specific responsibilities for new technology reporting. Describe all significant organizational relationships.

(d) Plans for both the initial and the continuing indoctrination of senior project personnel, supervision, and of other appropriate technical personnel in the benefits, responsibilities and details of new technology reporting.

(e) The plans for conducting the "frequent periodic reviews" required by the "New Technology" clause. Include plans for supplementing existing Company invention reporting system(s) to insure reporting of that "new technology," which does not constitute invention (any new or improved products, devices, materials, processes, methods, scientific or technical computer programs, techniques, compositions, systems, machines, apparatuses, articles, fixtures, and tools, are reportable, whether or not they constitute invention).

(f) The details of actual documentation of reportable items, and the methods by which they will be reported. Include plans for (i) submission of sufficient detail to permit evaluation of the novelty and potential usefulness of the reportable items, (ii) avoiding unnecessary redocumentation by inclusion of existing documents or abstracts therefrom.

(g) Level of effort anticipated. (Quarterly/monthly rates and estimated disclosure output rates are desirable.)

(61) [Reserved]

(62) Where Standard Form 33 (Solicitation, Offer, and Award) is not used, a statement as follows:

ORDER OF PRECEDENCE (JULY 1968)

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Sched-

ule; (b) Terms and Conditions of the solicitation; (c) General Provisions; (d) other provisions of the contract, where attached or incorporated by reference; and (e) the Specifications.

The foregoing statement may be modified to change the order or to add or delete items to meet the needs of a particular procurement;

(63) Where neither Standard Form 33 (Solicitation, Offer, and Award) nor Standard Form 18 (Request for Quotations) is used, a statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) (insert name and address, telephone area code, number, and extension);

(64) Where Standard Form 33 (Solicitation, Offer, and Award) is not used, a statement on the first sheet or on a cover sheet of the Request for Proposals that:

"Proposals must set forth full, accurate and complete information as required by this request for proposal (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001."

This statement shall be suitably modified when Quotations are requested;

(65) Where neither Standard Form 33 (Solicitation, Offer, and Award) nor Standard Form 18 (Request for Quotations) is used, a requirement for inclusion of "county" as part of quoter's/offeror's address will be inserted;

(66) Where Standard Form 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors should indicate in the offer the address to which payment should be mailed, if such address is different from that shown for the offeror (Contracting officers shall include this information in all resultant contracts which are to be administered by a Defense Contract Administration Services Regional Office.);

(67) Any applicable wage determination of the Secretary of Labor (for construction contracts, see Subpart 18–12.4; for service contracts, see Subpart 18–12.11);

(68) [Reserved]

(69) Requirement for the offeror to: (i) Furnish the date of the last review by the Government of his property control and accounting system and describe actions taken to correct any deficiencies found; (ii) state that he has reviewed, understands and can comply with all property management and accounting procedures set forth in the RFP, Appendix B to the NASA PR and NASA Handbook 9500.2; and (iii) state whether or not the costs associated with (ii) above are included in his cost proposal.

(70) The "Patent Royalities" clause set forth in § 18–9.102–2(f)(2);

(71) To insure timely distribution of Material Inspection and Receiving Reports (DD Form 250), include distribution instructions in the Schedule or as an attachment to the contract (see Appendix I);

(72) Unless exempted by § 18–12.805 from inclusion of the Equal Opportunity clause, the representations set forth in § 18–12.806(b).

(73) Unless exempted by § 18–12.805 from inclusion of the Equal Opportunity clause on the face page or cover sheet of the solicitation, these notices:

I. Note the affirmative action requirement of the Equal Opportunity clause which may apply to the contract resulting from this solicitation.

II. Note the certification of nonsegregated facilities in this solicitation. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (October 1971)

(74) In accordance with § 18–12.806(a), the notice of Pre-Award On Site Equal Opportunity Compliance Review set forth therein.

(75) If the contract involves preformance of services on a Government installation, the following provision:

SITE VISIT (JULY 1968)

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for a claim after award of the contract.

(76) When the procurement involves a set-aside for small business concerns, the following provision:

This is a _____% set-aside for small business concerns.

(77) When the procurement involves a set-aside for labor surplus area concerns, the following provision:

This is a _____% set-aside for labor surplus area concerns.

(c) In addition to the information specified in paragraph (b) of this section, for contracts in excess of $1 million the request for proposal should contain requirements for the following information to be furnished by the offeror in his proposal, if applicable. This information may be required in the request for proposal for inclusion in contracts of lesser dollar value if deemed appropriate.

(1) *Technical proposal.* (i) Method by which offeror proposes to solve the technical problems of the project; descriptions, sketches, and plans of attack in sufficient detail to permit engineering evaluation of the proposals;

(ii) Specification of exceptions to proposed technical requirements;

(iii) Statement of background experience in fields relating to the procurement;

(iv) Names and résumés of experience of key technical personnel who will be employed on the project and extent to which each will participate in the performance of the project; an organization chart of the segment of offeror's organization which will be directly assigned to the project, listing names and job categories;

(v) Description and location of the company-owned research, test and production equipment and facilities which will be available for use on the project; separate list of any additional facilities or equipment required in the performance of the work; separate lists of existing Government facilities available to the contractor and required for use on the project; and

(vi) Hourly time estimates (without pricing information) by labor class for each phase or segment of the project; extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required; indication of number and types of personnel necessary to be hired and arrangements made to obtain them.

(2) *Business management proposal.* (i) Organization proposed for carrying out the project, including organization charts showing interrelationship of business management, technical management and subcontract management; indication of all levels of operation and management, from lower levels through intermediate management to top level management.

(ii) Résumé of experience of all key personnel who will conduct the managerial affairs of the project;

(iii) Contractual procedures proposed for the project to effect administrative and engineering changes, describing differences from existing procedures;

(iv) Extent to which offeror has invested corporate funds in research and development work in the project area or directly related areas and plans for future expenditures for such work; extent, if any, to which offeror is willing to participate in the cost of the project (see § 18–3.405–3);

(v) Statement as to capacity at which company-owned research, test, and production equipment and facilities required in the performance of the work are currently working; extent to which such facilities and equipment could handle the additional workload imposed by this project; cost of any additional facilities or equipment required in the performance of the work with information as to whether such additional facilities or equipment will be contractor-furnished or Government-furnished; statement of value of existing Government facilities available to offeror and required for use on the project, showing the Government agencies and facilities contracts involved;

(vi) Statement of past performance and experience including:

(a) List of Government contracts in excess of $1 million received in past 3 years or currently in negotiation involving mainly research and development work, showing each contract number, Government agency placing the contract, type of contract, and brief description of the work;

(b) For each cost-type contract, specify amounts of cost overruns or underruns, reasons therefor, and percentage of fixed fee;

(c) For each contract, give record of contract completion as against completion date anticipated at time of entering into contract, giving explanations for completion delays;

(d) Identify and explain any terminations for default or Government convenience;

(vii) Balance sheet for offeror's last fiscal year, accompanied by profit and loss statement;

(viii) Detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal;

(ix) In soliciting proposals for support services requiring price quotations for a cost reimbursement type contract the request for proposals should set forth available data respecting the quantity and quality of supplies and services required. These data should be set forth in terms of man-hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs. To be responsive, a proposer must submit a detailed cost or price proposal based on the effort described or estimated in the request for proposals. If the proposer feels that the work can be accomplished more efficiently with organizational plans, staffing, management, or equipment other than those indicated in the request for proposal, he may also submit an alternate proposal, supported by a detailed cost or price proposal;

(d) Requests for proposals, which are subject to the review and approval of a Source Evaluation Board, should be developed in accordance with the above paragraphs and the requirements of paragraph 512 of the NASA Source Evaluation Board Manual (NPC 402).

(e) Request for proposals for procurements which are subject to Title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000 d–1), shall include a requirement for obtaining an "Assurance of Compliance" (NASA Form 1206) in accordance with the provisions of § 18–1.355.

9. Subpart 18–3.7 is revised in its entirety as follows:

Subpart 18–3.7—Negotiated Overhead Rates

§ 18–3.700 Scope of subpart.

This subpart sets forth the policy and procedure governing the negotiation of overhead rates and billing rates for use in cost-reimbursement type contracts.

§ 18–3.701 Definitions.

§ 18–3.701–1 Negotiated final overhead rates.

The term "negotiated final overhead rate," as used in this subpart, means a percentage or dollar factor which expresses the ratio(s) mutually agreed upon by the Government and the contractor, at the close of a regularly stated period (preferably the contractor's fiscal year), of indirect expense incurred in the period to an appropriate base of the same period. Ordinarily, such rates are used as a means of determining the amount of reimbursement for the applicable indirect costs for such completed period; in such cases, they are termed "postdetermined" overhead rates. In certain circumstances involving educational institutions, negotiated final overhead rates may be used as a means of determining the amount of reimbursement for the applicable indirect costs to be incurred during a future period of contract performance; in such cases, they are termed "predetermined" overhead rates (see § 18–3.704–2(b)).

§ 18–3.701–2 Billing rates.

The term "billing rate," as used in this subpart, means a tentative overhead rate established for interim reimbursement purposes pending negotiation of the final overhead rate.

§ 18–3.701–3 Overhead (indirect costs).

The term "overhead (indirect costs)," as used in this subpart, includes but is not limited to, the general groups of indirect expenses such as those generated in manufacturing departments, engineering departments, tooling departments, general and administrative departments, and, if applicable, indirect costs accumulated by cost centers within these general groups. In the case of contractors using fund accounting systems, the term includes, but is not limited to, the general groups of expenses such as general administration and general expense, maintenance and operation of physical plant, library expenses, and use charges for building and equipment.

§ 18–3.701–50 Negotiating authority.

The term "negotiating authority," as used in this Subpart, means the office or individual designated by the Procurement Office, NASA Headquarters, to conduct the negotiation of final overhead rates with a contractor, or the NASA representative on an interagency negotiation team.

§ 18–3.702 Purpose.

The major purposes of negotiated final overhead rates are:

(a) To effect uniformity of approach in cases where an overhead pool will be allocated to more than one Government contract;

(b) To effect economy in administrative effort; and

(c) To promote timely settlement of reimbursement claims. The purpose of a billing rate is to provide for interim reimbursement either at negotiated billing rates as provided in the schedule of the contract or at billing rates acceptable to the contracting officer, subject in either event, to appropriate adjustment when final rates are established.

§ 18–3.703 Applicability.

Negotiated final overhead rates are authorized for use primarily in cost-reimbursement type contracts for research and development with commercial organizations and nonprofit or educational institutions. They may also be used in other cost-reimbursement type contracts, after a determination is made by the contracting officer that their use is advantageous to the Government. When it is not apparent that any one of the major purposes enumerated in § 18–3.702 results or will result by the use of negotiated final overhead rates, a negotiated overhead rates clause will not be used; and the contracting officer will, on the basis of an advisory audit report, determine final overhead costs under the appropriate clause of the contract covering the allowability of costs and payments.

§ 18–3.704 Contract clauses.

§ 18–3.704–1 Contracts with concerns other than educational institutions.

Insert the following clause in contracts with concerns other than educational institutions when negotiated overhead rates are to be used pursuant to this Subpart.

NEGOTIATED OVERHEAD RATES (NOVEMBER 1971)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed-Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule, shall submit to the Contracting Officer with a copy to the cognizant audit activity and the Procurement Office, NASA Headquarters, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (i) the agreed final rates; (ii) the bases to which the rates apply; (iii) the periods for which the rates apply; and (iv) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated billing rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when final rates for that period are established. To prevent substantial over or under payment, billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of the negotiated billing rates provided in the Schedule shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Nothing in this clause shall preclude the Contracting Officer from negotiating final overhead rates applicable to this contract, for any period, for the purpose of contract closeout, provided that (i) the negotiated amount of overhead costs applicable hereto does not exceed $200,000 for any one fiscal year, and (ii) the results of the negotiation are set forth in a written agreement, executed by both parties, in accordance with the provisions of paragraph (d) above. In addition, such agreement shall specify that there will

be no adjustment against other Government contracts for over or under recovery under this contract disclosed through a subsequent, regular final overhead rate negotiation or determination.

In the case of a cost-plus-incentive-fee contract, substitute "Allowable Cost, Incentive Fee, and Payment" for "Allowable Cost-Fixed-Fee and Payment" in paragraph (a) of the foregoing clause.

§ 18–3.704–2 Contracts with educational institutions.

(a) *Contracts with educational institutions for postdetermined rates.* Insert the following clause in contracts with educational institutions when postdetermined overhead rates are to be used pursuant to this Subpart 18–3.7.

NEGOTIATED OVERHEAD RATES (POSTDETERMINED (NOVEMBER 1971)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer with a copy to the cognizant audit activity and the Procurement Office, NASA Headquarters, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 3 of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (i) the agreed final rates; (ii) the bases to which the rates apply; (iii) the periods for which the rates apply; and (iv) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated billing rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when final rates for that period are established. To prevent substantial over or under payment, billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of the negotiated billing rates provided in the Schedule shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Nothing in this clause shall preclude the Contracting Officer from negotiating final overhead rates applicable to this contract, for any period, for the purpose of contract closeout: *Provided,* That (i) the negotiated amount of overhead costs applicable hereto does not exceed $200,000 for any 1 fiscal year, and (ii) the results of the negotiation are set forth in a written agreement, executed by both parties, in accordance with the provisions of paragraph (d) above. In addition, such agreement shall specify that there is agreement between the Government and the Contractor that there will be no adjustment against other Government contracts for over or under recovery under this contract, disclosed through a subsequent, regular, final overhead rate negotiation or determination.

(b) *Contracts with educational institutions for predetermined rates.* Provision may be made in cost reimbursement type research and development contracts with educational institutions for payment of reimbursable indirect costs on the basis of predetermined overhead rates, provided that this basis is used with respect to all contracts with an institution. Insert the following clause in contracts with educational institutions when such negotiated overhead rates are to be used pursuant to this Subpart.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (NOVEMBER 1971)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year shall submit to the Contracting Officer with a copy to the cognizant audit activity and the Procurement Office, NASA Headquarters, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 3 of the NASA Procurement Regulation as in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the effective date of this contract shall be incorporated into the contract Schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this contract upon execution and shall specify (i) the agreed predetermined overhead rates; (ii) the bases to which the rates apply; (iii) the fiscal year unless the parties agree to a different period for which the rates apply; and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Dispute" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in 3.704–2 of the NASA Procurement Regulation as in effect on the date of this contract.

(g) Allowable indirect costs for the period until the end of the Contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

When predetermined overhead rates are to be used and no such rate or rates have been established for the contractor's current fiscal year, the contracting officer shall obtain from the contractor during the contract negotiations a proposal for a predetermined overhead rate or rates to be applied until the end of such fiscal year. As far as practicable, such proposal should be based on the contractor's cost experience under similar contracts together with supporting cost data. The overhead rates or rates for such initial period shall be predetermined by negotiation and set forth in the contract schedule. The schedule shall also include the bases to which the rates apply and the period for which the rates apply. Pending establishment of predetermined overhead rates for the initial period, the contractor shall be reimbursed at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for that period are established.

§ 18–3.704–3 Modification of contract clauses.

When a separate negotiated overhead rate agreement is used in accordance with § 18–3.706(f), the clause in § 18–3.704–2 may be appropriately modified.

§ 18–3.705 Policy.

(a) Since many NASA contractors are under the Department of Defense negotiated overhead rate procedure, it is the policy of NASA to participate in joint negotiations with the Department of Defense. The NASA participant will be a representative of either the Procurement Office, NASA Headquarters, or an installation Procurement Office designated by the Procurement Office, NASA Headquarters.

(b) Where NASA contractors are not under the Department of Defense negotiated overhead rate procedure or negotiation responsibility has not otherwise been assigned to another Government agency, the negotiation or settlement of overhead cost will be conducted by the Procurement Office, NASA Headquarters, or its designee.

§ 18–3.706 Procedure.

When a contractor is under NASA cognizance, the procedure for the establishment and use of negotiated final overhead rates will generally consist of submission by the contractor of an overhead rate proposal, obtaining an advisory audit report from the cognizant auditor, holding a prenegotiation conference for review of the contractor's proposal and the advisory audit report, conduct of negotiation, cost or pricing data certification, preparation of a negotiation report or summary, and execution and distribution of the overhead rate agreement.

(a) The contractor shall submit a copy of his proposal to the contracting officer of each NASA installation with which he has contracts, with a copy to the cognizant audit activity and the Procurement Office, NASA Headquarters.

(b) The cognizant audit activity will review the contractor's overhead rate proposal using Part 18–15 of this chapter as a basis for determining allowable costs. An advisory audit report will be submitted to the contracting officer of each NASA installation having a contract with the contractor and a copy to the cognizant NASA Regional Audit Office. Such report shall (1) include a list of contracts subject to the overhead rates to be negotiated; (2) identify any advance agreements and special provisions governing specific contracts; (3) set forth the findings of the audit activity; and (4) include the results of any discussions of such findings with the contractor.

(c) A prenegotiation conference will be held by the negotiating authority with attendance by the auditor, representatives of NASA installations, as designated by the Procurement Office, NASA Headquarters, and other Government procurement and audit activities interested in or planning to attend the negotiations. This conference will relate to the areas of difference between the advisory audit report and the contractor's proposal, any other factors pertaining to the negotiations, decide upon the approach to the negotiations and establish a consolidated negotiation position. As a further aid to the negotiating authority, a representative of the audit activity and/or a representative of the NASA Audit Division will, upon request, attend the negotiation conference.

(d) The negotiation conference will be conducted by the Procurement Office, NASA Headquarters or its designee. The allowability of costs and methods of cost allocation will be governed by Part 18–15 of this chapter and any advance agreements or special contractual provisions governing specific contracts negotiations shall encompass an agreement on final overhead rates, the specific items to be treated as direct charges, and when applicable, the billing rates for the succeeding period. Such agreement shall be binding on all applicable NASA contracts.

(e) At the completion of negotiation, the negotiating authority shall prepare an overhead rate agreement which shall conform to paragraph (d) of the clauses in §§ 18–3.704–1, 18–3.704–2(a) or 18–3.704–2(b), as applicable. The agreement shall include a list of affected contracts, identifying those with advance agreements or special provisions and the rates applicable thereto, and shall be executed by the contractor and the NASA negotiating authority. In addition, the negotiating authority shall prepare a negotiating report listing the names, titles, and organizations of those persons in attendance, the rates negotiated, the reasons for variation from the audit report, if any, the period of rate applicability, the basis for the determination of such rates, the specific items treated as direct costs, and, when applicable, the billing rates agreed upon for application in the succeeding period. A copy of the overhead rate agreement and the negotiation report shall become a part of the official file of each affected contract. Sufficient copies of the agreement and report shall be forwarded to the Procurement Office, NASA Headquarters, for distribution to all affected activities.

(f) When contracts with educational institutions using predetermined overhead rates are negotiated subsequent to an advance overhead rate agreement which establishes overhead rates for all or part of the period of contract performance, the advance overhead rate agreement shall be incorporated into the contract.

§ 18–3.707 Coordination.

(a) Because of the preponderance of contractors that are now subject to the negotiated overhead rate procedure with the Department of Defense, arrangements have been made with the Department of Defense to advise the Procurement Office, NASA Headquarters, of a pending overhead rate negotiation. All NASA field installations and Headquarters activities having an interest in the negotiation will be notified by the Procurement Office, NASA Headquarters, of the scheduled negotiation. The notification will designate the NASA representative in such negotiations. Should it be impossible for the designated representative to attend, the Procurement Office, NASA Headquarters, shall be notified and arrangements will be made to insure that NASA is represented. Such representative shall be responsible for prenegotiation coordination with all affected NASA installations and for the furnishing of the overhead rate agreement and the negotiation report to the Procurement Office, NASA Headquarters for further distribution to interested NASA installations. Final overhead rates negotiated under the above arrangements are those rates contemplated under the clauses in §§ 18–3.704–1 and 18–3.704—2, and such rates shall be automatically incorporated into the contract upon execution of the overhead rate agreement.

(b) In cases where NASA is the sponsoring agency and has the responsibility for conducting the negotiation, the NASA negotiating authority will be responsible for notifying and coordinating with all interested NASA field installations, appropriate Department of Defense offices, and other interested Government agencies.

(c) The Department of Defense prepares and distributes a "Master List of Commercial Contractors, Nonprofit Institutions and Educational Organizations Operating Under Negotiated Overhead Rates for Cost Type Contracts" which identifies the Government agency sponsoring the negotiation. This list will be supplemented by the Procurement Office, NASA Headquarters to include those contractors for which NASA becomes the sponsoring agency.

§ 18–3.707–1 Interagency coordination for educational institutions.

Each educational institution is assigned to a particular Government agency which is responsible for negotiating final overhead rates with that educational institution. The procedures in § 18–3.706 will be followed in negotiating rates with those institutions assigned to NASA.

§ 18–3.708 Ceilings on indirect costs.

(a) Cost sharing arrangements are occasionally made wherein the cost participation by the contractor is evidenced by an agreement to accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated ceiling overhead rate may be used for application prospectively.

(b) In other cases, it may be desirable to provide a ceiling on overhead rates beyond which the contractor will absorb the costs. For example: (1) The proposed contractor is a new company or has been recently reorganized and there may be no past record of indirect costs incurred, or (2) the proposed contractor may have a recent record of rapidly increasing overhead rates due, perhaps, to a declining volume of sales without a commensurate decline in indirect expense, or (3) the proposed contractor may be seeking to enhance its competitive position in a particular procurement by basing its proposal on overhead rates lower than those which reasonably may be expected to occur during contract performance and which would likely cause a cost overrun. When any of the foregoing circumstances are apparent with either a proposed prime or subcontractor, reasonable, realistic and equitable ceilings should be negotiated on overhead rates.

(c) In the cases cited in paragraphs (a) and (b) of this section, the Government will not be obligated to pay any additional amount on account of overhead above the negotiated ceiling rates. In the event overhead rates resulting from an audit of allowable costs are less than the negotiated ceiling rates, the contractor shall be reimbursed on the basis of such lower rates.

10. Section 18–3.804–2 is revised to read as follows:

§ 18–3.804–2 Evaluation procedures not involving Source Evaluation Board.

The evaluation procedures set forth in paragraphs (a) through (c) of this section shall be utilized except where the procedures set forth in § 18–3.804–3 apply.

(a) *Responsibility of contracting officer.* (See § 18-3.801-2.)

(b) *Technical evaluation.* Generally, procurement personnel are not qualified to evaluate proposals from a technical viewpoint and must rely on scientific and engineering personnel for this function. In research and development contracting, awards should usually be made to those companies that have the highest competence in the specific field of science or technology involved, although awards should not be made on the basis of research and development capabilities that exceed those needed for the successful performance of the work. It is imperative therefore that technical evaluations and findings be fully documented and reviewed by responsible personnel. Technical evaluation should include the following:

(1) The contractor's understanding of the scope of the work as shown by the scientific and technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved;

(5) The contractor's willingness to devote his resources to the proposed work with appropriate diligence; and

(6) The contractor's proposed method of achieving the reliability required.

In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written findings as to selection of source by the technical personnel, proposals shall be returned to the negotiator. The contracting officer is responsible for reviewing the justification in support of the written findings of technical personnel to determine that the justification is adequate and that the documentation is complete.

(c) *Business evaluation*—(1) *Price and cost analysis.* Each proposal requires some form of price or cost analysis. The contracting officer must exercise judgment in determining the extent of analysis in each case. On high-dollar value procurements, particularly where effective competition has not been obtained, the analysis should be thorough, and the record carefully documented to disclose the extent to which the various elements of costs, fixed fee, or profit contained in the contractor's proposals were analyzed. The negotiation memorandum should also reflect the consideration given to the recommendations of the price analyst and the basis for nonacceptance or departure from the recommendations during the course of negotiations.

(2) *Automatic data processing equipment.* In evaluating proposals containing a significant amount of cost for automatic data processing equipment (ADPE) the contracting officer should obtain from the prospective contractor a feasibility study and a lease-versus-purchase study covering the acquisition of such equipment or service. The contracting officer will obtain the recommendations of the price analyst and appropriate ADPE technical personnel as to the adequacy of the studies and the prospective contractor's determinations resulting from the studies. Particular attention should be given to those proposals containing a high dollar amount for rental of ADPE or complete systems to be used solely for performance of the contract. Current Bureau of the Budget criteria (NASA Handbook 2410.1, "Management Procedures for Automatic Data Processing Equipment") should be used, where applicable, as a guide in evaluating the contratcor's studies (Also see Subpart 18-3.11). Prospective contractors should be encouraged to:

(i) Use ADPE machine time available within a reasonable geographic distance;

(ii) Use telecommunications links to remote Government-owned or leased ADPE systems, and

(iii) Purchase ADPE in preference to leasing the equipment where the financial advantage is the sole or overriding factor.

(3) *Other factors.* The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, he must consider such factors as the company's management organization, past performance, reputation for reliability, availability of the required facilities, ability to control, maintain and account for any property provided by the Government, and cost controls.

PART 18-5—INTERDEPARTMENTAL PROCUREMENT

1. Section 18-5.601 is revised to read as follows:

§ 18-5.601 Printing, binding, and duplicating.

Printing, binding, and duplicating required by NASA shall be obtained in accordance with (a) the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States, and (b) NMI 1490.2, "Responsibilities, Procedures, and Standards for NASA Printing, Duplicating, and Binding." Inclusion of printing in contracts for supplies or services is prohibited unless specifically approved under the procedures set forth in NMI 1490.2. Contract statements of work and data requirements should be carefully reviewed to assure that unauthorized printing, binding, or volume duplicating constituting printing are not included in contracts. When a proposed procurement may involve printing, binding, or duplicating, close coordination will be effected with the Installation Central Printing Management Officer in the review process to ensure compliance with these regulations.

§ 18-5.602 [Deleted]

2. Section 18-5.602 is deleted.

PART 18-6—FOREIGN PURCHASES

1. Section 18-6.602 is added:

§ 18-6.602 Duty free entry of scientific apparatus.

(a) Under the Educational, Scientific, and Cultural Materials Importation Act of 1966, NASA has been determined to be an eligible institution to request duty free entry for apparatus and instruments under Items 851.60 and 851.65, Tariff Schedules of the United States (19 U.S.C. 1202 (1970)). Pursuant to this authority, NASA may apply for duty free entry of instruments or apparatus, or related repair components, if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States.

(b) Regulations governing procedures for application for duty free entry are set forth in 15 CFR 602 and 19 CFR 10.115. To take advantage of this authority, contracting officers shall, with the advice of legal counsel, prepare an application in seven copies on Business and Defense Services Administration Form BDSAF-768 in accordance with the cited regulations.

(c) Applications prepared as prescribed above shall be submitted to the Bureau of Customs through the Director of Procurement, NASA Headquarters (Code KDP-1). The Office of General Counsel shall represent NASA before the Customs Bureau and the Court of Customs and Patent Appeals.

PART 18-7—CONTRACT CLAUSES

1. Section 18-7.103-18 is revised to read as follows:

§ 18-7.103-18 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

2. Section 18-7.104-26 is added:

§ 18-7.104-26 Frequency authorization.

Any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required shall contain the following provision:

FREQUENCY AUTHORIZATION (DECEMBER 1971)

(a) Authorization of radiofrequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures furnished by the Contracting Officer shall be followed in obtaining radiofrequency authorization.

(b) For any experimental, developmental or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractual performance. NASA Form 566, "Application for Frequency Assignment," shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radiofrequency authorization is required.

3. Section 18-7.104-35 is revised to read as follows:

§ 18-7.104-35 Progress payments.

The policies and procedures set forth in Subpart 5 of Appendix E concerning the use of progress payments shall be followed by procurement offices. The provisions to be included in the invitation for bids and the "Progress Payments" clause authorized for use pursuant to Subpart 5 of Appendix E are authorized for use in accordance with the instructions contained therein, except that the short form "Progress Payments" clause set forth in paragraph (b) of this section may be used in lieu of the clause set forth in paragraph (a) of this section whenever it is estimated that the procurement will be less than $100,000 and the standard percentages are to be used.

(a) Progress payments total costs clause (Long Form).

PROGRESS PAYMENTS (LONG FORM "TOTAL COSTS" CLAUSE) (JANUARY 1972)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 80 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a)(1)(ii)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 80 percent of the cost mentioned in (a)(1)(i) above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) 80 percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed 80 percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination for Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 80 percent[1] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after calculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) *Title.* Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; special test equipment and other special tooling to which the Government is to acquire title pursuant to any other provision of this contract; nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids title to which is not obtained as special tooling pursuant to this paragraph; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports—access to records.* Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records and accounts.

(h) *Special provisions regarding default.* If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) *Reservations of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) *Progress payments to subcontractors.* (1) The amount mentioned in item (a)(1)(ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontracts may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to

[1] For lower percentages for this paragraph (b) and for (a)(3)(ii) and (a)(4), see E-512-2.

those subcontracts in which there is expected to be a long "lead time," between the beginning of work and the first delivery, approximating 4 months or more for small business concerns and 6 months or more for firms which are not small business concerns, which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the Contractor and on a basis of not more than 80 percent of total costs (except that this percentage may be 85 percent of total costs for those subcontractors which are small business concerns), and (ii) make all rights to the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j)(1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to offer and provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the NASA Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(b) Progress payments total costs clause (Short Form).

PROGRESS PAYMENTS (SHORT FORM "TOTAL COSTS" CLAUSE) (JANUARY 1972)

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be 80 percent of the Contractor's cumulative total costs under this contract, less the sum of any previous progress payments. In no event, however, may the aggregate amount of progress payments made exceed 80 percent of the total contract price.

(2) The Contractor's costs must be reasonable, allocable to this contract, consistent with sound and generally accepted accounting principles, and may include depreciation or amortization allowance. Such costs shall exclude amounts for materials to which the Contractor has not acquired title.

(3) At no time shall unliquidated progress payments exceed 80 percent of the total contract price of the items and services not yet delivered and invoiced to and accepted by the Government.

(b) *Recovery of progress payments.* Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced, and accepted shall be reduced by 80 percent of the contract price of such items and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been recovered.

(c) *Reduction or suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to material and work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting principles shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property and work not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the default clause.

(g) *Reservation of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

4. Sections 18–7.104–53 and 18–7.104–54 are added:

§ 18–7.104–53 NASA financial management reporting.

When financial management reporting on NASA Form 533 series of reports is required (see NASA Management Instruction 9501.1A, "Contractor Financial Management Reporting System" and NASA Handbook 9501.2A "Procedures for Contractor Reporting of Correlated Cost and Performance Data") such requirement will be set forth in the Procurement Request, and the appropriate clause set forth in paragraphs (a) and (b) of this section shall be set forth in the contract.

(a) The clause set forth below shall be used when the NASA Form 533 series of reports, excluding the optional Performance Analysis Report (NASA Form 533P), is required from the contractor:

NASA FINANCIAL MANAGEMENT REPORTING (NOVEMBER 1971)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 series of reports in accordance with the instructions set forth in NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2A) and on the reverse side of the form, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with the technical/schedule reporting, will be set forth in the Schedule of this contract. Implementation by the Contractor of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category, and will give due regard to the Contractor's established financial management information system.

(b) Lower level detail, which the Contractor utilizes for its own management purposes to validate information reported to NASA, shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule of this contract or as designated administratively in writing by the Contracting Officer.

(d) The Contractor agrees to insert the substance of this clause in all first tier cost type subcontracts specifically identified in writing by the Contracting Officer and shall include the cost of such subcontracts in his cost reports.

(e) During the performance of this contract, if NASA requires a change, either an increase or decrease in the information or reporting requirements specified in the Schedule, or as provide for in (a) or (c) above, such change shall be effected by the Contracting Officer in accordance with the procedures of the "Changes" clause of this contract.

(b) The clause set forth below shall be used in conjunction with the clause in paragraph (a) of this section when the optional Monthly Performance Analysis Report is also required from the contractor.

NASA FINANCIAL MANAGEMENT REPORTING (PERFORMANCE ANALYSIS REPORT) (NOVEMBER 1971)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Performance Analysis Report (NASA Form 533P) in accordance with the instructions set forth in NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2A) and on the reverse side of of the form, as supplemented in the Schedule of this contract.

§ 18–7.104–54 Financial reporting of Government-owned / Contractor-held property other than space hardware.

The clause set forth below shall be inserted in all contracts which contain a "Government Property" clause when NASA is to furnish to the Contractor, or the Contractor is to acquire, Government property.

FINANCIAL REPORTING OF GOVERNMENT-OWNED/CONTRACTOR-HELD PROPERTY OTHER THAN SPACE HARDWARE (NOVEMBER 1971)

(a) The Contractor shall prepare and submit semi-annually the report, "Analysis of Government-Owned/Contractor-Held Property Other Than Space Hardware" (NASA Form 1018), in accordance with the instructions on the reverse of the form and NASA Handbook, "Financial Reporting for Government-Owned/Contractor-Held Property and Space Hardware" (NHB 9500.2).

(b) If administration of this contract has been delegated to the Department of Defense, the original and four copies shall be

submitted to the cognizant DOD Property Administrator. If this contract is being administered by NASA, the original and four copies shall be submitted to:

(When NASA is to administer the contract, insert the address and office code of the NASA organization within the installation responsible for NASA Form 1018 control) Regardless of responsibility for administration of this contract, one copy marked "Advanced Copy", shall be submitted directly to:

(Insert the address and office code of the Financial Management or Fiscal Office of the NASA installation placing this contract)

(c) The Contractor's report shall be submitted so as to be received not later than the 26th day of the month following the end of each report period, as set forth on the reverse of NASA Form 1018; however, whenever possible, the Government desires that the report be submitted within 10 workdays following the end of each report period.

(d) The Contractor agrees to insert the reporting requirements of this clause in all first-tier subcontracts, except that such requirements shall provide for the submission of subcontractor reports directly to the Contractor. The Contractor shall require the subcontractor reports to be submitted to him in sufficient time to meet the reporting dates in (c) above.

(e) The Contractor's semiannual report shall consist of a consolidation of the subcontractor reports and his report.

5. Section 18–7.105–8 is revised to read as follows:

§ 18–7.105–8 Stop work orders.

(a) *Use of clause.* The clause set forth in paragraph (c) of this section is authorized for use in any negotiated fixed-price type contract under which work stoppage may be required for reasons such as advancements in the state of the art, performance or engineering breakthroughs, or realignment of programs. The clause is not authorized for use in research contracts with educational or other nonprofit institutions.

(b) *Use of orders.* (1) Inasmuch as stop work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only with prior approval of the procurement officer. Generally, use of a stop work order will be limited to those situations where it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for such suspension is not feasible. Although a stop work order may be used pending a decision to terminate for convenience, it will not be used pending a decision to terminate for default, nor will it be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(2) Stop work orders should include (i) a clear description of the work to be suspended; (ii) instructions as to the issuance of further orders by the contractor for material or services; (iii) guidance as to action to be taken on subcontracts; and (iv) other suggestions to the contractor for minimizing costs. Promptly after issuance, stop work orders should be discussed with the contractor and should be modified, if necessary, in the light of such discussions.

(3) As soon as feasible after a stop work order is issued, (i) the contract will be terminated; or (ii) the stop work order will either be canceled or—if necessary and if the contractor agrees—be extended beyond the period specified in the order. In any event, this must be done before the specified stop work period expires. When an extension of the stop work order is necessary, it shall be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(c) *Clause.*

STOP WORK ORDER (JUNE 1972)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) [1] days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) [1] days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) Cancel the Stop Work Order, or

(ii) Terminate the work covered by such order as provided in the "Default" or the "Termination for Convenience" clause of this contract.

(b) If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if—

(i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(ii) The Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage: *Provided,* That, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a Stop Work Order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.

(d) If a Stop Work Order is not canceled and the work covered by such order is terminated for default, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

[1] This clause may provide for less than 90 days.

6. Sections 18–7.108–1 and 18–7.108–2 are added:

§ 18–7.108 Incentive price revision clauses.

§ 18–7.108–1 Firm targets.

When, in accordance with the provisions of Subpart 18–3.4 of this chapter, the fixed-price incentive contract described in § 18–3.404–4(a)(2) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, and target price.

INCENTIVE PRICE REVISION (FIRM TARGET) (JUNE 1972)

(a) *General.* The supplies or services identified in the Schedule as items _____ are subject to price revision in accordance with the provisions of this clause: *Provided,* That in no event shall the total final price of such items exceed _____ dollars ($_____). Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of cost.* For the purposes of this clause, "cost" or "costs" means allowable cost in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract.

(c) *Submission of data.* Within _____ (_____) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, the Contractor shall submit, in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items.

(d) *Price revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an amount for profit or loss determined as follows:

When the total final negotiated cost is:	*The adjustment for profit or loss is:*
Equal to the total target cost	Total target profit.
Greater than the total target cost	Total target profit less ____ percent (____%) of the amount by which the total final negotiated cost exceeds the total target cost.
Less than the total target cost	Total target profit plus ____ percent (____%) of the amount by which the total final negotiated cost is less than the total target cost.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract, with the following exceptions:

(i) Insofar as the parties may agree in writing, prior to the determination of the total final price, (A) to exclude any specific elements of cost from the total final price and (B) to a procedure to provide subsequent disposition of such elements; and

(ii) To the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(e) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Adjustment of payments.* Pending execution of the contract modification referred to in subparagraph (d)(3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract: *Provided,* That if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (g)(2) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target price and the ceiling price upon submission of factual data from the Contractor showing that final costs under this contract will be substantially greater than target cost. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the determination of the total final price under paragraph (d) above. After execution of the contract modification referred to in subparagraph (d)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Limitation on payments.* (1) This paragraph (g) shall not apply after final price revision.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor, a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the "Progress Payments" clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (g), including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (g), including this subparagraph (4) modified as outlined in (i) above.

(h) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract and the Contracting Officer shall promptly issue a decision thereunder.

(i) *Termination.* If this contract is terminated prior to establishment of the total final price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(j) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

(k) *Exclusion from target price and total final price.* Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or will include any amount for such purpose.

(l) *Separate reimbursement.* The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(m) *Taxes.* As used in the "Federal, State, and Local Taxes" clause of this contract or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price, or if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so as not to affect the contractor's profit or loss on this contract.

In the event the contract calls for parts or other supplies or services, which are to be ordered under a provisioning document or Government option and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (n) shall be included in such clause:

(n) *Parts.* Parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree.

§ 18–7.108–2 Successive targets.

When in accordance with the provisions of Subpart 18–3.4 of this chapter, the fixed-price incentive contract described in § 18–3.404–4(a)(3) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the initial target cost, initial target profit, and initial target price.

INCENTIVE PRICE REVISION (SUCCESSIVE TARGETS) (JUNE 1972)

(a) *General.* The supplies or services identified in the Schedule as items _____ are subject to price revision in accordance with the provisions of this clause: *Provided,* That in no event shall the total final price of such items exceed _____ dollars ($_____). The prices of these items as shown in the Schedule are the initial target prices, which include an initial target profit of _____ percent (_____%) of the initial target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of cost.* For the purposes of this clause, "cost" or "costs" means allowable costs in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract.

(c) *Submission of data for establishment of firm fixed price or final profit adjustment formula.*

(1) Within _____ (_____) days after the end of the month in which the Contractor has completed _____,[1] the Contractor shall submit:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and the services performed and to be performed;

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on DD Forms 784 or in such other form as the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for:

(A) Supplies delivered and services performed, and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on DD Form 784 or in such other form as the parties may agree, together with:

(A) Sufficient data to support the accuracy and reliability of such estimate, and

(B) An explanation of the differences between such an estimate and the original estimate used in establishing the initial target prices set forth in this contract for the same supplies or services.

(2) In addition to the data submitted under subparagraph (1) above, the Contractor shall submit the following:

(i) Supplemental statements of costs incurred subsequent to the end of the month specified in (1) above for:

(A) Supplies delivered and services performed, and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data which may reasonably be required by the Contracting Officer;

as and to the extent that such information becomes available prior to the conclusion of negotiations establishing the total firm target price.

(d) *Establishment of firm fixed price or final profit adjustment formula.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit in accordance with the following:

(1) A total firm target cost shall be negotiated, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit will be decreased, or if the total firm target cost is less than the total initial target cost, the total initial target profit will be increased by _____ percent (_____%) of the difference between the total initial target cost and the total firm target cost[2] and the resulting amount shall be the total firm target profit, *provided,* That in no event will such total firm target profit be less than _____ percent (_____%) or more than _____ percent (_____%) of the total initial target cost.

(3) If the total firm target cost plus the total firm target profit present a reasonable price for performance of that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price. In this event, the firm fixed price shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree as to a firm fixed price shall not constitute a dispute under the "Disputes" clause of this contract. In such event or, if establishment of a firm fixed price is considered to be inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula for determining final profit or loss in accordance with the following:

When the total final negotiated cost is:	*The adjustment for final profit or loss is:*
Equal to the total firm target cost	Total firm target profit.
Greater than the total firm target cost	Total firm target profit less _____ percent (_____%) of the amount by which the total final negotiated cost exceeds the total firm target cost.
Less than the total firm target cost	Total firm target profit plus _____ percent (_____%) of the amount by which the total final negotiated cost is less than the total firm target cost.

The total firm target cost, total firm target profit, and profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submission of data for final price revision.* Unless a firm fixed price has been agreed to pursuant to paragraph (d) above, the Contractor shall submit in such form as the Contracting Officer may require and within _____ (_____) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items.

(f) *Final price revision.* Unless a firm fixed price has been agreed to pursuant to paragraph (d) above the Contractor and the Contracting Officer shall, as soon as practicable after submission of the data required by paragraph (e) above establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, there shall be established by negotiation the total final negotiated cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an allowance for final profit or loss determined in accordance with the formula agreed to pursuant to subparagraph (d)(4) above.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract with the following exceptions:

(i) Insofar as the parties may agree in writing, prior to the determination of the total final price,

(A) To exclude any specific elements of cost from the total final price and

(B) To a procedure to provide subsequent disposition of such elements; and

(ii) To the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(g) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(h) *Adjustment of payments.* Pending execution of the contract modification referred to in subparagraph (f)(3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices set forth in this contract until firm target prices are established pursuant to paragraph (d) above; thereafter the firm target prices shall be used for billing: *Provided,* That if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (i)(3) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target price and the ceiling price upon submission of factual data from the Contractor showing that the final costs under this contract will be substantially greater than target cost. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the determination of any price under paragraph (d) or (f) above. After execution of the contract modification referred to in subparagraph (f)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits resulting therefrom shall be promptly made.

(i) Limitation on payments. (1) This paragraph (i) shall not apply after a firm

[1] The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

[2] The language may be changed as necessary to set forth the negotiated adjustment pattern where the percentage figure to be used for adjustment of the initial target profit is not the same for all levels of cost variation.

fixed price or a total final price is established pursuant to subparagraph (d)(3) or (f)(2).

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year beginning for the quarter in which a delivery is first made or services are first performed and accepted by the Government under this contract and as of the end of each quarter, the Contractor shall submit to the Contracting Officer with a copy thereof to the cognizant contract auditor a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total firm target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in subparagraph (d)(4) above when the amount of costs stated under (ii) above differs from the aggregate firm target costs of such supplies or services; and;

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount stated in (2)(iv) above exceeds the sum stated in (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the "Progress Payments" clause of this contract instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (i), including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (i), including this subparagraph (4) modified as outlined in (i) above.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (i) total firm target cost and a final profit adjustment formula, or (ii) a total final price, within 60 days after the date for the submission of the data required by paragraphs (c) and (e) respectively, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract, and the Contracting Officer shall promptly issue a decision thereunder.

(k) *Termination.* If this contract is terminated prior to establishment of the total final price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(l) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

(m) *Exclusion from target price and total final price.* Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or will include any amount for such purpose.

(n) *Separate reimbursement.* The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(o) *Taxes.* As used in the clause of this contract entitled "Federal, State, and Local Taxes" or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease shall be made in the total target price or, if it has been established in the total final price, so as not to affect the Contractor's profit or loss on this contract.

In the event the contract calls for parts or other supplies or services which are to be ordered under a provisioning document or Government option and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (p) shall be included in such clause:

(p) *Parts.* Parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be initial target prices or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering such parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree.

7. Section 18-7.109-2 is revised to read as follows:

§ 18-7.109-2 Prospective periodic price redetermination at stated intervals.

(a) *Description, applicability, and limitations.* See § 18-3.404-5.

(b) *Clause.*

PRICE REDETERMINATION (TYPE A) (JUNE 1972)

(a) *General.* The unit prices and the total price set forth in this contract shall be periodically redetermined in accordance with the provisions of this clause.[1] The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed.

(b) *Price redetermination periods.* For the purpose of price redetermination the performance of this contract is divided into successive periods. The first period shall extend from the date of this contract to _____,[2] and the second and each succeeding period shall extend for _____ (_____) months from the end of the last preceding period, except that the final period may be varied by agreement of the parties. The first day of the second and each succeeding period shall be the effective date of price redetermination for the period.

(c) *Price redetermination.* Not more than _____[3] day nor less than _____[3] days before the end of each redetermination period except the last, and as otherwise provided in (iii) below, the Contractor shall submit:

(i) Proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract together with—

(A) An estimate and breakdown of the costs of such supplies or services on DD Form 784 or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of such estimate; and

(C) An explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;

(ii) A statement of all costs incurred in the performance of this contract through the end of the _____[4] month prior to the date of the submission of proposed prices, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) Supplemental statements of costs incurred subsequent to the date set forth in (ii) above for—

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[1] Where a ceiling is applicable, the following proviso shall be added: "*Provided,* That in no event shall the total amount paid under this contract exceed _____ dollars ($_____)". Alternatively, the contract may provide ceiling amounts for each or any of the price redeterminations under this contract.

[2] This point may be expressed in terms of units delivered, or as a calendar date, but in either case the period shall generally end on the last day of a month.

[3] Insert in the blanks numbers of days so that the Contractor's submission will be late enough to reflect recent cost experience (having in mind the Contractor's accounting system), but early enough to permit review, audit if necessary, and negotiation prior to the start of prospective period.

[4] Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iv) Any other relevant data which may reasonably be required by the Contracting Officer.

For the purpose of the foregoing submission, "costs" means allowable costs in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract. Upon receipt of the data required by this subparagraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(d) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(f) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (e) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That, if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (g) (3) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices upon submission of factual data from the Contractor showing that the redetermined price will be substantially greater than the current billing price. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (e) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Limitation on payments.* (1) This paragraph (g) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor, a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments);

Provided, That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (g) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(h) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60)[5] days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (e), (f), and (g) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(i) *Termination.* If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

[5] This period may be varied by the parties at the time of negotiating the contract.

8. Section 18-7.109-3 is added:

§ 18-7.109-3 Retroactive price redetermination after completion.

(a) *Description, applicability, and limitations.* See § 18-3.404-6.

(b) *Clause.*

PRICE REDETERMINATION (TYPE E)
(JUNE 1972)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause: *Provided,* That in no event shall the total amount paid under this contract exceed _____ dollars ($_____).

(b) *Price redetermination.* Within _____ (_____) days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit (i) proposed prices, (ii) a statement of all costs incurred in the performance of this contract, allowable in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract, on DD Form 784 or any other form on which the parties may agree, and (iii) any other relevant data which may reasonably be required by the Contracting Officer. Upon receipt of the required data, the Contractor and the Contracting officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and services performed by the Contractor under this contract. Where the Contractor fails to submit the required data within the time specified, payment of all invoices may be suspended by the Contracting Officer until the data are furnished.

(c) *Subcontracts.* No subcontract under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices which shall apply to supplies delivered and to services performed by the Contractor hereunder.

(e) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (d) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That, if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (f) (3) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices upon submission of factual data from the Contractor showing that the redetermined price will be substantially greater than the current billing price. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the redetermina-

tion of prices under this clause. After execution of the contract modification referred to in paragraph (d) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(f) *Limitation on payments.* (1) This paragraph (f) shall apply until final price redetermination to the full extent permitted by this contract.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first-made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor, a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (f), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(g) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60)[1] days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (d), (e), and (f) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(h) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause for completed supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

9. Section 18–7.203–4 is revised to read as follows:

§ 18–7.203–4 Allowable cost, fixed fee and payment.

(a) *Allowable cost, fixed fee and payment.* Insert the following clause in all cost-reimbursement type contracts, except as provided in paragraph (b) of this section. Additional instructions for use of the clause are set forth in paragraph (c) of this section.

ALLOWABLE COST, FIXED FEE AND PAYMENT (JULY 1970)

(a) For the purpose of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) Claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the 1-year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in

[1] This period may be varied by the parties at the time of negotiating the contract.

determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

In subparagraph (f) (ii) (B) the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided,* that a corresponding increase is made in the period for retention of records required in paragraph (a) (4) of the Examination of Records clause set forth in § 18–7.203–7.

(b) *Allowable cost, incentive fee, and payment.* When the contract provides for incentives which may result in the revision of the fee, the clause set forth below will be used, except in cost-plus-award-fee type contracts. Additional instructions for use of the clause are set forth in paragraph (c) of this section.

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT. (JUNE 1972)

(a) (1) For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) A fee determined as provided in this contract.

(2) The target cost and target fee of this contract are set forth in the Schedule and shall be subject to adjustment in accordance with (h) and (i) below. As used throughout this contract the term—

(i) "Target cost" means the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below; and

(ii) "Target fee" means the fee which was initially negotiated on the assumption that this contract would be performed and delivered as stipulated in the Schedule, for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of fee shall be made to the Contractor as specified in the Schedule: *Provided, however,* That whenever in the opinion of the Contracting Officer, the Contractor's performance or cost then incurred indicates that target fee will not be achieved, payment of fee will be based on such lesser fee, not lower than the minimum fee, as the Contracting Officer may determine to be appropriate. After payment of eighty-five percent (85%) of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee or one hundred thousand dollars ($100,000) whichever is less. When the Contracting Officer has ordered that fee payments be reduced in accordance with the foregoing, he may increase the basis for payment to an amount not to exceed the target fee upon an affirmative showing by the Contractor that such action is justified and equitable.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audits, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, or refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) Claims for reimbursement of costs, including reasonable expenses incidental, thereto incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements" claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the 1-year period following final payment.

Except as provided in (j) below, payments under the assignment and claims excepted from the release shall be subject to adjustment by reason of the adjustment of fee in accordance with (i) below.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(h) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification or when any equitable adjustment in the target cost is authorized under any other clause of this contract, equitable adjustments in the target cost, target fee, minimum fee, maximum fee, or any or all of them, as appropriate, shall be set forth in an amendment or supplemental agreement to this contract.

(i) The fee payable hereunder shall be the target fee increased by (insert contractor's participation) cents for every dollar by which the total allowable cost is less than the target cost or decreased by (insert contractor's participation) cents for every dollar by which the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ percent nor less than _____ percent, of the target cost; and, except as provided in (j) below, within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f) (i) above, and claims excepted from the release required by (f) (ii) above. If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The terminations shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(j) For the purpose of the adjustment of the fee in accordance with (i) above, the term "total allowable cost" shall not include allowable costs arising out of:

(i) Any of the causes specifically enumerated in the clause hereof entitled "Excusable Delays" to the extent they are without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after the negotiation of the target cost of this contract, of a statute, court decision, written ruling or regulation which results in the Contractor's being required to pay or bear the burden of any tax or duty, or increase in the rate thereof;

(iii) Any direct cost attributed to the Contractor's assistance or participation in litigation as required by the Contracting Officer pursuant to a provision of this contract, including the furnishing of evidence and information requested pursuant to the clause

hereof entitled "Notice and Assistance Regarding Patent and Copyright Infringement";

(iv) The procurement and maintenance of additional insurance not included in the target cost and required by the Contracting Officer or claims for reimbursement for liabilities to third persons pursuant to the clause hereof entitled "Insurance—Liability to Third Persons";

(v) Any claim, loss or damage resulting from a risk for which the Contractor has been relieved of liability pursuant to the clause hereof entitled "Government Property."

Except as otherwise specifically provided in this contract, all other allowable costs shall be included in the term "total allowable cost" for the purpose of the adjustment of the fee in accordance with (i) above.

(k) The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification of this contract signed by the Contractor and the Contracting Officer.

In the event the contracts call for spare parts or other supplies and services which are to be ordered under a provisioning document or Government option, the following provision (l) shall be included:

(l) Compensation for supplies (including spare parts) and services which are to be furnished under this contract pursuant to a provisioning document or Government option shall be determined in accordance with the provisions of this clause notwithstanding any inconsistent provision in such provisioning document or Government option.

(c) *Additional instructions.* (1) Whenever, pursuant to paragraph (c) of the clauses set forth in paragraphs (a) and (b) of this section, vouchers or invoices which are submitted for approval include amounts for progress payments made to fixed-price type subcontractors, the payment to the prime contractor may include the full amount of the progress payment made to the subcontractor.

(2) In paragraph (f)(ii)(B) of the clauses set forth in paragraphs (a) and (b) of this section, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the clause set forth in §18-7.203-7.

(3) The detailed arrangements for adjustment of base fee in award fee contracts shall be set forth in the contract Schedule.

(4) Paragraph (c) of the clause set forth in paragraph (b) of this section states that payment of fee shall be made to the contractor as specified in the Schedule. Generally the Schedule should provide that payment of fee will be based on target fee.

(5) In the case of cost-sharing contracts and cost-reimbursement type contracts without fee, use the clause set forth in paragraph (a) of this section modified as follows:

(i) Change the title of the clause to read "Allowable Cost and Payment."

(ii) Insert the following sentence in lieu of the second sentence of paragraph (c) of the clause,

"After payment of an amount equal to eighty percent (80%) of Government's share of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of (the Government's share of) such total estimated cost, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside."

If the contract does not provide for cost-sharing, delete the parenthetical reference to the Government's share from the above sentence.

(iii) Delete the words "and any part of the fixed fee" from paragraph (e); and

(iv) In contracts which provide for cost-sharing, delete paragraph (a)(ii).

(6) In the case of cost-plus-award-fee contracts, use the clause set forth in paragraph (a) of this section, modified as follows:

(i) Substitute the words "base fee and award fee" for "fixed-fee" wherever they appear except in (a)(ii); and

(ii) Change (a)(ii) to read as follows:

"such base fee, if any, and such additional fee as may be awarded, as provided for in the Schedule."

(7) In cost-plus-a-fixed-fee contracts which contain award fee provisions, use the clause set forth in paragraph (a) of this section, modified as follows:

(i) Substitute the words "fixed-fee and award fee" for "fixed-fee" wherever they appear except in (a)(ii); and

(ii) Change (a)(ii); to read as follows:

"such fixed-fee, if any, and such additional fee as may be awarded, as provided for in the Schedule."

(8) In the case of combined cost-plus-incentive-fee/cost-plus-fixed-fee contracts use the clause set forth in paragraph (b) of this section, modified as follows:

(i) In subparagraph (c) delete "not lower than the minimum fee" and substitute therefore "not lower than the sum of the fixed-fee and minimum fee";

(ii) In subparagraph (c) delete "not to exceed the target fee" and substitute therefor "not to exceed the sum of the fixed-fee and target-fee"; and

(iii) In subparagraph (h), delete "when the work under this contract" and substitute "When work subject to the incentive-fee portion of this contract".

(9) The contracting officer shall determine to his satisfaction that the estimated cost of the contract initially negotiated does not include amounts for the contingencies identified in paragraph (j) of the clause set forth in paragraph (b) of this section.

10. Section 18-7.203-8 is revised to read as follows:

§ 18-7.203-8 Subcontracts.

(a) In accordance with the requirements in § 18-23.201-2, and subject to the instructions in paragraph (b) of this section, insert the following clause.

SUBCONTRACTS (AUGUST 1969)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement type, time and materials, or labor-hour, and would involve an estimated amount in excess of $10,000, including any fee, or (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificate are required, by other provisions of this contract, to be obtained from the subcontractor; and

(5) Identification of the type of subcontract to be used.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above without the consent of the Contracting Officer if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of the approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" paragraph set forth in the appropriate clause prescribed by paragraph 7.108 of the NASA Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit the

portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) of this paragraph.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(b) In contracts of the types listed in § 18-23.201-2(b), insert the following paragraph (g) in lieu of paragraph (g) of the clause set forth in paragraph (a) of this section:

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's procurement system and the subcontract is within the scope of such approval. (August 1969)

(c) In accordance with § 18-12.804(c), insert the "Equal Opportunity Preaward Clearance of Subcontracts" clause set forth therein.

11. Section 18-7.203-18 is revised to read as follows:

§ 18-7.203-18 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

12. Section 18-7.204-27 is added:

§ 18-7.204-27 Frequency authorization.

In accordance with § 18-7.104-26, insert the clause set forth therein.

13. Section 18-7.204-54 is added:

§ 18-7.204-54 Financial reporting of Government-owned/contractor-held property other than space hardware.

In accordance with the instructions in § 18-7.104-54, insert the clause set forth therein.

14. § 18-7.204-55 [Deleted]

Section 18-7.204-55 is deleted.

15. Section 18-7.204-56 is revised to read as follows:

§ 18-7.204-56 NASA financial management reporting.

Insert the appropriate clause set forth in § 18-7.104-53 in accordance with the instructions set forth therein.

16. Section 18-7.302-17 is revised to read as follows:

§ 18-7.302-17 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

17. Section 18-7.302-55 is revised to read as follows:

§ 18-7.302-55 Scientific and technical information service.

In conformance with section 203(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473), and in the interest of conserving time and funds, and to avoid unnecessary duplication of effort, it is NASA policy to encourage contractors to use scientific and technical information in the possession of NASA in direct support of all NASA contracts involving research and development work. This information, which is available to contractors free of charge, includes past and current reports on research, development, test and evaluation. In order that such scientific and technical information may be provided in a timely manner, it is necessary for the contractor to furnish NASA the information specified in the clause set forth below. Accordingly, the following clause shall be inserted in all research and development contracts.

SCIENTIFIC AND TECHNICAL INFORMATION SERVICE (JUNE 1972)

(a) In order that NASA may provide the Contractor scientific and technical information in accordance with the procedures set forth in the introduction section of Scientific and Technical Aerospace Reports (STAR) distributed by NASA, the Contractor shall, within 10 days after receipt of this contract, furnish in writing to the Scientific and Technical Information Office (Code KS), NASA Headquarters, Washington, D.C. 20546, (i) name of contractor, (ii) contract number, (iii) date of contract completion, (iv) security classification of contract and, (v) name and address of the individual responsible for technical performance of the contract.

(b) NASA reserves the right, in the event of the unavailability of any scientific and technical information requested, to notify the Contractor of such unavailability. Failure of NASA to furnish any information requested shall not entitle the Contractor to any adjustment in the price, cost (estimated or target), fee, time required for performance, or delivery schedule of the contract.

18. Section 18-7.303-26 is added:

§ 18-7.303-26 Frequency authorization.

In accordance with § 18-7.104-26, insert the clause set forth therein.

19. Section 18-7.303-54 is added:

§ 18-7.303-54 Financial reporting of Government-owned/contractor-held property other than space hardware.

In accordance with the instructions in § 18-7.104-54, insert the clause set forth therein.

§ 18-7.303-55 [Deleted]

20. Section 18-7.303-55 is deleted.

21. Section 18-7.303-56 is revised to read as follows:

§ 18-7.303-56 NASA financial management reporting.

Insert the appropriate clause set forth in § 18-7.104-53 in accordance with the instructions set forth therein.

22. Section 18-7.350-14 is revised to read as follows:

§ 18-7.350-14 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

23. Section 18-7.350-19 is revised to read as follows:

§ 18-7.350-19 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18-7.302, 18-7.303, and 18-7.304 may be added to or substituted for the clauses set forth in §§ 18-7.350-1 through 18-7.350-18; however, care should be exercised to ensure that there are no inconsistencies.

§ 18-7.402-8 [Amended]

24. In § 18-7.402-8, add the following paragraph (d):

* * * * *

(d) In accordance with § 18-12.804, insert the "Equal Opportunity Preaward Clearance of Subcontracts" clause set forth therein.

25. Section 18-7.402-17 is revised to read as follows:

§ 18-7.402-17 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

26. Section 18-7.403-15 is added:

§ 18-7.403-15 Frequency authorization.

In accordance with § 18-7.104-26, insert the clause set forth therein.

27. Section 18-7.403-54 is added:

§ 18-7.403-54 Financial reporting of Government-owned/contractor-held property other than space hardware.

In accordance with the instructions in § 18-7.104-54, insert the clause set forth therein.

§ 18-7.403-55 [Deleted]

28. Section 18-7.403-55 is deleted.

29. Section 18-7.451-17 is revised to read as follows:

§ 18-7.451-17 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

30. Section 18-7.452-15 is added:

§ 18-7.452-15 Frequency authorization.

In accordance with § 18-7.104-26, insert the clause set forth therein.

31. Section 18-7.452-54 is added:

§ 18-7.452-54 Financial reporting of Government-owned/contractor-held property other than space hardware.

In accordance with the instructions in § 18-7.104-54, insert the clause set forth therein.

32. Section 18-7.452-56 is added:

§ 18-7.452-56 NASA financial management reporting.

Insert the appropriate clause set forth in § 18-7.104-53 in accordance with the instructions set forth therein.

33. Section 18-7.460-16 is revised to read as follows:

§ 18-7.460-16 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

34. Section 18-7.461 is revised to read as follows:

§ 18-7.461 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18-7.402, 18-

7.403, 18–7.404, 18–7.451, 18–7.452, and 18–7.453 may be added to or substituted for the clauses set forth in §§ 18–7.460–1 through 18–7.460–21; however, care should be exercised to ensure that there are no inconsistencies.

35. Section 18–7.702–44 is revised to read as follows:

§ 18–7.702–44 Equal opportunity.

In accordance with the provisions of § 18–12.804, insert the appropriate clause set forth therein.

36. Section 18–7.702–49 is added:

§ 18–7.702–49 Financial reporting of Government-owned/contractor-held property other than space hardware.

Insert the clause set forth in § 18–7.104–54.

37. Section 18–7.703–36 is revised to read as follows:

§ 18–7.703–36 Equal opportunity.

In accordance with the provisions of § 18–12.804, insert the appropriate clause set forth therein.

38. Section 18–7.704–29 is revised to read as follows:

§ 18–7.704–29 Equal opportunity.

In accordance with the provisions of § 18–12.804, insert the appropriate clause set forth therein.

39. Section 18–7.704–34 is added:

§ 18–7.704–34 Financial reporting of Government-owned/contractor-held property other than space hardware.

Insert the clause set forth in § 18–7.104–54.

40. Section 18–7.901–6 is revised to read as follows:

§ 18–7.901–6 Payments.

PAYMENTS (JUNE 1972)

The Contractor shall be paid as follows upon the submission of invoices or vouchers approved by the Contracting Officer.

(a) *Hourly rate.* (1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in the Schedule by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or his designee. The Contractor will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(2) Unless otherwise set forth in the Schedule, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by the Contracting Officer but the total amount withheld shall not exceed $50,000. Such amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) hereof.

(3) Unless provisions of the Schedule hereof otherwise specify, the hourly rate or rates set forth in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates will be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the "Disputes" clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Subpart 2, Part 15, of the NASA Procurement Regulation in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, General and Administrative expense, allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 2, Part 15 of the NASA Procurement Regulation. The Contractor shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to the Contracting Officer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Contractor to the subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under (a)(1) above.

(3) The Contractor shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, he shall promptly notify the Contracting Officer to that effect, and give the reason therefor. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) It is estimated that the total cost to the Government for the performance of this contract will not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs which will accrue in the performance of his contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price then set forth in the Schedule, the Contractor shall notify the Contracting Officer to that effect giving his revised estimate of the total price to the Government for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for the performance of this contract will be substantially greater or less than the stated ceiling price, the Contractor shall so notify the Contracting Officer, giving his revised estimate of the total price for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Government has reason to believe that the work to be required in the performance of this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor giving the then revised estimate of the total amount of effort to be required under the contract.

(d) The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price set forth in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by the Contracting Officer not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of (f) and (g) below), the Government shall as promptly as may be practicable pay any balance due and owing the Contractor The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract, but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion.

(f) The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties

arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) The Contractor agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Contractor or any assignee, which arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to the Contracting Officer.

The following may be inserted as paragraph (b)(4) in the foregoing "Payments" clause where the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, and in accordance with the limitations contained in § 18-3.406-1(d)(1) and (2):

(4) When the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b)(1), above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; provided that in no event shall such price be in excess of the Contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

41. Section 18-7.901-13 is revised to read as follows:

§ 18-7.901-13 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

42. Section 18-7.902-14 is added:

§ 18-7.902-14 Financial reporting of Government-owned / Contractor-held property other than space hardware.

In accordance with the instructions in § 18-7.104-54, insert the clause set forth therein.

43. Section 18-7.902-55 is revised to read as follows:

§ 18-7.902-55 NASA financial management reporting.

Insert the appropriate clause set forth in § 18-7.104-53 in accordance with the instructions set forth therein.

44. Section 18-7.5001-5 is revised to read as follows:

§ 18-7.5001-5 Equal opportunity.

In accordance with the provisions of § 18-12.804, insert the appropriate clause set forth therein.

§ 18-7.5004-5 [Deleted]

45. Section 18-7.5004-5 is deleted.

PART 18-8—TERMINATION OF CONTRACTS

1. Section 18-8.101-1 is revised to read as follows:

§ 18-8.101-1 Amount of claim or settlement.

When the action to be taken under this part depends upon the amount of a termination claim or settlement, then in determining such amount, the following shall not be deducted from the gross claim or settlement: (a) Credits for retention or other disposal of termination inventory allocated to the claim; (b) credits for advance, progress, or partial payments already received by the contractor; and (c) amounts payable for completed articles or work at the contract price which are included in the settlement proposal. However, amounts payable for the settlement of termination claims of subcontractors shall be deducted.

2. Section 18-8.201 is revised to read as follows:

§ 18-8.201 Authority of contracting officers.

(a) The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this chapter is usually found in the termination clause or other provisions of the contract.

(b) Contracts shall be terminated, whether for default or convenience, only when such action is in the best interest of the Government, as determined in accordance with this chapter. Where the contracting officer has ascertained that (1) the contractor will accept a no-cost settlement, (2) Government property was not furnished, and (3) there are no outstanding payments, claims, or other contractor obligations, the contracting officer shall effect a no-cost settlement agreement in lieu of authorizing the issuance of a notice of termination. When a no-cost settlement cannot be obtained, a notice of termination should be issued; however, when the price of the undelivered balance of the contract is less than $1,000, a termination for convenience should normally not be effected but the contract be permitted to run to completion. If a notice of termination has been issued, negotiation of the settlement with the contractor, including a no-cost settlement if appropriate, shall be the responsibility of the termination contracting officer (see §§ 18-8.206 and 18-8.210-4).

(c) Special consideration will be given to small business over large business concerns when terminating contracts for the convenience of the Government. When the same item is under contract with both large and small business concerns and it is necessary to terminate for the convenience part, but not all, of the units still to be delivered, the decision as to which contract or contracts to terminate shall be made by the Procurement Officer.

(d) Heads of installations shall appoint a termination contracting officer (TCO) (see § 18-1.206) to perform specific duties relating to contract termination as his primary function. Such duties should include: (1) Receiving and reviewing the Termination Authority (NASA Form 1412); (2) reviewing the contract and other related documents, prior to issuing the Notice of Termination, to insure protection of the Government's rights under the contract; (3) issuing notices of termination, reinstatement, and recission to contractors; (4) assigning termination docket control numbers; (5) developing, maintaining, and managing basic controls relating to contract termination and settlement actions, and (6) carrying out the duties, functions, and responsibilities set forth in this Part 18-8.

3. Section 18-8.202 is revised to read as follows:

§ 18-8.202 Prior clearance of significant contract terminations.

(a) Prior NASA Headquarters clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of NASA Headquarters through its liaison point designated in paragraph (b) of this section. In a labor surplus area a lesser number than 100 may be significant, and if so, should be similarly cleared.

(b) The following information will be submitted to the Office of Legislative Affairs, NASA Headquarters (Code C) which, in coordination with the Office of Public Affairs (Code F), has been designated the NASA liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees involved including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category, and whether contractor is large or small business, and include any known impact on hardcore disadvantaged employment programs;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information.

Information copies of the above will be furnished the following NASA Headquarters offices: The Office of Public Affairs (Code F), the cognizant Program Office, and the Director of Procurement (Code KDP-1).

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The liaison office will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination costs.

4. Section 18-8.212-2 is revised to read as follows:

§ 18-8.212-2 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the TCO shall submit each such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves $50,000 or more (see § 18-8.101-1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract, or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The Procurement Officer concerned determines that a review is desirable; or

(4) The TCO, in his discretion, desires review by the Settlement Review Board.

The review and approval of each settlement or determination in excess of $500,000 shall be made by the Board at NASA Headquarters.

(b) *Submission of information.* The TCO shall submit to the Settlement Review Board the Termination Settlement Supplement Agreement, supported by such detailed documentation as is required for an adequate review. The supporting documentation should normally include copies of (1) the contractor's or subcontractor's settlement proposal, (2) audit report, (3) termination inventory schedules, (4) consolidated Inventory Disposal Report (DD Form 1636), and any required approvals in connection therewith, (5) the TCO's negotiation memorandum explaining the settlement (see § 18-8.211), and (6) when appropriate, the opinion of any other Settlement Review Board which previously reviewed the settlement. The Board will prescribe the number of copies of the information it requires, and may in its discretion, require the submission of additional information.

5. Section 18-8.217 is revised to read as follows:

§ 18-8.217 Settlement of terminated contracts with incentive provisions.

(a) *FPI contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (l) of the clause in § § 18-7.108-1 and 18-8.701 and paragraph (k) of the clause in § 18-7.108-2.

(1) *Partial termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (1) of the clause in § 18-7.108-1 and paragraph (k) of the clause in § 18-7.108-2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbursement may be claimed in the settlement proposal, shall be accomplished by the contracting officer. Reimbursement for completed articles included in the settlement proposal for which a final price has not established shall be at target price. An appropriate reservation as to final price with respect to such completed articles shall be incorporated in the supplemental agreement.

(2) *Complete termination.* If any items were delivered and accepted by the Government, prices shall be established by the contracting officer under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see § 18-8.701) shall govern and the provisions of the incentive clause shall not be applicable. The TCO responsible for the termination settlement will assure himself, on the basis of evidence he deems proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *CPIF contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of § 18-8.702.

(1) *Partial termination.* Under a partial termination of a CPIF contract, settlement by the TCO shall be limited to an adjustment of target fee as provided in paragraph (l) of the clause in § 18-7.203-4(b). The supplemental agreement shall include a reservation with respect to any adjustment of target cost resulting from the partial termination. Adjustment of target cost, if required, shall be accomplished by the contracting officer.

(2) *Complete termination.* The settlement will be negotiated in accordance with the provisions of Subpart 18-8.4 and § 18-8.702. The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

6. Section 18-8.701 is revised to read as follows:

§ 18-8.701 Termination clause for fixed-price contracts.

(a) Except as otherwise permitted by § 18-8.705, the following clause shall be used in any fixed-price contract in excess of $2,500 for supplies or experimental, developmental, or research work other than experimental, developmental, or research work with educational or nonprofit institutions, when no profit is contemplated. The following clause shall be used also in all fixed-price construction contracts in excess of $10,000 except that paragraph (e) thereof shall be deleted and the paragraphs in paragraph (b) of this section shall be used.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (JUNE 1972)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contracts as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such

property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Part 8, NASA Procurement Regulation as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action he may receive and act upon any such termination claim at any time after such one (1) year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract, price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amount determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies or services accepted by the Government (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (e)(i) hereof;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8.303 of the NASA Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e)(i) and (ii)(A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against cost incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of 3 years after

final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(b) The following paragraphs shall be used in place of (e) of the above clause when the contract is for construction in excess of $10,000.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) The cost of such work;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or service furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8.303 of the NASA Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

7. Section 18–8.704–1 is revised to read as follows:

§ 18–8.704 Research and development contracts with educational and other nonprofit institutions.

§ 18–8.704–1 Termination clause.

(a) Except as otherwise required by § 18–8.705–50, the following clause shall be used in any contract for experimental, developmental, or research work (whether fixed-price or cost-reimbursement type) with an educational or nonprofit institution; when such contract is placed on a no-profit or no-fee basis, except that in the case of organizations other than educational institutions, paragraph (d) shall be deleted and the paragraph in paragraph (b) of this section shall be used.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (JUNE 1972)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments, the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than 1 year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such 1 year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in Part 15, Subpart 3 of the NASA Procurement Regulation as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided,* That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning thirty (30) days from the date of such demand.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) Completed or partially completed plans, drawings, and information; and

(ii) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(b) The following paragraph shall be used in place of (d) in the above clause when the contract is with a nonprofit

organization other than an educational institution.

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the Part 15, Contract Cost Principles and Procedures of the NASA Procurement Regulation as in effect on the date of this contract.

8. Section 18–8.706 is revised to read as follows:

§ 18–8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (JUNE 1972)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(iv) Assign to the buyer, in the manner, and to the extent directed by the buyer, all of the right, title, and interest of his seller under the orders of subcontracts so terminated;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(vii) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (vi) above: *Provided, however,* That the seller (A) shall not be required to extend credit to any purchaser and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer. *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary or as the buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) *After receipt of* a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination unless one or more extensions in writing are granted by the buyer, upon request of seller made in writing within such 6-month period or authorized extensions thereof. However, if the buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 6-month period or any extension thereof. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer shall pay to the seller the amounts determined by the buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies or services accepted by the buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies or services paid to or to be paid for under (i) above; and

(B) The cost of settling and paying claims arising out of the termination work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the buyer pursuant to 8.303 of the NASA Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C), and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii) (A) above the fair value, as determined by the buyer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b)(vii).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as deter-

mined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Part 8 of the NASA Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller shall—from the effective date of termination until the expiration of 3 years after final settlement under the contract—preserve and make available to the buyer and to the Government at all reasonable times at the office of the seller, all his books, records, documents, and other evidence bearing on the costs and expenses of the seller under the contract and relating to the work terminated hereunder, or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

The last sentence of paragraph (h) in the above clause may be deleted in subcontracts with agencies of the United States Government, foreign governments or agencies thereof, State or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

9. Section 18–8.807 is revised to read as follows:

§ 18–8.807 Format for the release of excess funds under terminated contracts.

From: Termination Contracting Officer located at _____

To: Procurement Office located at _____

Subj: Terminated Contract No. _____ with _____ (Contractor)

Refs: (a) (Cite Termination Notice and effective date.)

(b) (Cite previous letters releasing excess funds, if any.)[1]

1. By the referenced Termination Notice, the subject contract was (completely) (partially) terminated for the convenience of the Government.

2. On the basis of the best evidence available, it is estimated that the gross settlement costs will approximate $_____. Therefore, the amount available for release as excess to the contract is $_____. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

3. The related appropriation(s) and amount(s) involved are:

Appropriations(s)	*Allocated amount(s)*

(Contracting Officer)
(Location)

Copies to:
(Insert name and address of cognizant Financial Management Officer.)
(List other "copy to" addressees.)

[1] When prior letters releasing excess funds are cited, the following shall be used as the text of paragraph 2:

The estimated settlement costs previously reported by reference (b) in the total amount of $_____ is hereby revised. On the best evidence now available, it is estimated that the settlement costs will approximate $_____. Therefore, the additional amount available for release is $_____.

PART 18–10—BONDS AND INSURANCE

1. Section 18–10.101–3 is revised to read as follows:

§ 18–10.101–3 Annual performance bond.

"Annual performance bond" means a single bond (in lieu of separate performance bonds for each contract) which secures the performance of contracts (other than construction contracts) which require bonds and are entered into by a contractor during a specific fiscal year of the Government. Such bonds may be in different forms, including the following three: The first providing for penal sums separately applicable to each covered contract, regardless of the total amount of covered contracts; the second providing a gross penal sum cumulatively applicable to the total amount of all covered contracts but without a separate limit applicable to each contract; and the third providing both, separate contract and cumulative limits.

2. Section 18–10.101–7 is revised to read as follows:

§ 18–10.101–7 Fidelity bond.

"Fidelity bond" means a bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty on the part of an employee. A blanket fidelity bond covers all employees, except those expressly excluded by written endorsement on the bond.

3. Sections 18–10.101–8, 18–10.101–9, 18–10.101–10, 18–10.101–11, and 18–10.101–12 are revised to read as follows:

§ 18–10.101–8 Forgery bond or policy.

"Forgery bond or policy" (Depositors Form) means a bond or policy which secures the person or persons named therein up to the amount stated for losses caused by the forging or altering of a check, draft, or similar instrument issued by or purporting to have been issued by any of the insureds, and for losses resulting from a check or draft having been obtained from the insureds through impersonation.

§ 18–10.101–9 Patent infringement bond.

"Patent infringement bond" means a bond which secures the performance and fulfillment of the undertakings contained in a patent clause.

§ 18–10.101–10 Payment bond.

"Payment bond" means a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

§ 18–10.101–11 Penal sum or amount.

"Penal sum or amount" means the dollar amount shown in a bond and represents the maximum payment for which the surety is obligated.

§ 18–10.101–12 Performance bond.

"Performance bond" means a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements contained in the contract.

4. Sections 18–10.102–1 and 18–10.102–2 are revised to read as follows:

§ 18–10.102 Bid guarantees.

§ 18–10.102–1 Applicability.

This § 18–10.102 applies to both negotiated and formally advertised procurements. Where appropriate, the term "bid" includes "proposal".

§ 18–10.102–2 Limitations.

Bid guarantees shall not be required unless the solicitation specifies that the contract must be supported by a performance bond or performance and payment bonds. In connection with supply and services contracts, the bidder may furnish either an individual bid bond (Standard Form 24) or an annual bid bond (Standard Form 34). A bid guarantee will not be requested unless the bid exceeds $2,000 (see § 18–10.102–4(a)(1)). In connection with construction contracts, only the individual bid bond will be accepted.

5. Sections 18–10.102–4 and 18–10.102–5 are revised to read as follows:

§ 18–10.102–4 Solicitation provisions.

(a) Where a bid guarantee is determined to be necessary, the solicitation shall contain (1) a statement requiring that a bid guarantee be submitted with any bid in excess of $2,000 and containing such details as are necessary to enable bidders to determine the proper amount of bid guarantee to be submitted; and (2) the following provision:

BID GUARANTEE (JUNE 1972)

Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (60 days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (10 days if no period is specified) after receipt of the forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

(b) The requirement for the provision in paragraph (a)(2) of this section is met where Standard Form 22 (Instruc-

tions to Bidders (Construction Contracts)) is used in accordance with § 18–16.401–1(f) and § 18–16.401–3.

(c) The provision required by paragraph (a)(2) of this section may be appropriately modified in negotiated contracts.

§ 18–10.102–5 Noncompliance with bid guarantee requirements.

Where a solicitation requires that bids be supported by a bid guarantee, noncompliance with such requirement will require rejection of the bid, except that rejection of the bid is not required in these situations:

(a) Where only a single bid is received (in such cases the procurement office may or may not require the furnishing of the bid guarantee before award);

(b) Where the amount of bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid;

(c) Where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids in relation to the bid price for the maximum quantity bid upon, is sufficient in relation to the bid price for a quantity for which the bidder is otherwise eligible for award (and in that event any award to him shall be limited to the quantity covered by the bid guarantee);

(d) Where the bid guarantee is received late and the late receipt may be waived under the rules established in § 18–2.303 for consideration of late bids;

(e) Where an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid under § 18–2.406 if the bidder will increase the amount of the bid guarantee in proportion to the authorized bid correction; and

(f) Where a telegraphic modification of the bid is received without a corresponding modification of the bid guarantee, provided the bid modification expressly refers to the bid previously submitted in response to the invitation for bids and the bid guarantee satisfies the above criteria.

6. Sections 18–10.103–1 and 18–10.103–2 are revised to read as follows:

§ 18–10.103 Performance and payment bonds for construction contracts.

§ 18–10.103–1 Performance bonds.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a–270e), in connection with any construction contract exceeding $2,000 in amount except as provided in § 18–10.103–3 below, a performance bond shall be required in a penal amount deemed adequate by the contracting officer for the protection of the Government. Generally, the penal amount of each performance bond shall be 100 percent of the contract price at the time of award. But where the contracting officer finds that to require a 100 percent performance bond would be disadvantageous to the Government, he may prescribe a lesser penal amount, which should normally be not less than 50 percent of the original contract price, and in all cases no less than the amount of the payment bond. The performance bond shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished.

(b) Additional performance bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if—

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the bond protection should generally be increased so that the total performance bond protection is 100 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided,* That lesser penal amounts may be authorized by the contracting officer as indicated in paragraph (a) of this section. The increased penal amount may be secured either by increasing the bond protection provided by the existing surety or sureties (the format set forth in § 18–10.111–1 may be used when an additional bond is obtained from the original surety), or by obtaining an additional performance bond from a new surety; but see § 18–10.111–2 with respect to requiring consent of surety.

(c) In making allowance for bond premium in equitable adjustments or other price modifications affecting contracts, the allowance shall not be more than that calculated at the rate paid for the bonds furnished under the original contracts.

§ 18–10.103–2 Payment bonds.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a–270e), in connection with any construction contract exceeding $2,000 in amount, except as provided in § 18–10.103–3, a payment bond shall be required in a penal amount as follows:

(1) When the contract price is not more than $1 million, the penal sum shall be 50 percent of the contract price;

(2) When the contract price is more than $1 million but not more than $5 million, the penal sum shall be 40 percent of the contract price; and

(3) When the contract price is more than $5 million, the penal sum shall be $2,500,000.

(b) Additional payment bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if—

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the additional bond protection should generally be such that the total payment bond protection is 50 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided,* That when the contract price as so revised is more than $1 million but not more than $5 million the total payment bond protection shall be in a penal amount of 40 percent of the revised contract price: *Provided further,* That when the contract price as so revised is more than $5 million, the total payment bond protection shall be in the penal amount of $2,500,000. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional payment bond from a new surety, but see § 18–10.111–2 with respect to requiring consent of surety.

(c) In making allowance for bond premium in equitable adjustments or other price modifications affecting any contract, the allowance shall not be more than that calculated at the rate paid for the bonds furnished under the original contract.

7. Section 18–10.103–4 is revised to read as follows:

§ 18–10.103–4 Furnishing information to subcontractors and suppliers.

(a) It is NASA policy to furnish subcontractors or suppliers only general information with respect to the status of work and of payments made to prime contractors. Accordingly, subcontractors and suppliers may be furnished general information on such matters as the progress of the work, the accomplishment of payments as of certain dates, and the estimated percentage of completion.

(b) Where a payment bond has been required, a subcontractor or supplier, after satisfying the contracting officer that he is a bona fide subcontractor or supplier and stating that he has not been paid for work performed or supplies delivered, may be furnished the name and address of the surety furnishing the required bonds on the contract in question. The Government will not withhold contract payments due to the contractor or his assignee for the reason that subcontractors or suppliers have not been paid for work performed or supplies delivered.

8. Section 18–10.103–5 is added:

§ 18–10.103–5 Requirements and indefinite quantity contracts.

In requirements type contracts, for purposes of determination of the penal sum of bonds, the contract price will be deemed to be the price payable for the estimated quantity. In indefinite quantity contracts, the contract price will be deemed to be the price payable for the specified minimum quantity. When such

estimated or minimum quantities are exceeded, §§ 18-10.103-1(b) and 18-10.103-2(b) will be applied.

9. Sections 18-10.104-1 and 18-10.104-2 are revised to read as follows:

§ 18-10.104 Performance and payment bonds for contracts other than construction contracts.

§ 18-10.104-1 General.

(a) Generally, performance and payment bonds shall not be required in connection with contracts other than construction contracts, other than as provided in §§ 18-10.104-2 and 18-10.104-3 except that for any fixed-price construction subcontract exceeding $2,000, a prime contractor who has not been required to furnish a payment bond shall be required to obtain a payment bond from his subcontractor, in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

(b) Standard Form 25 (Performance Bond), Standard Form 35 (Annual Performance Bond) and Standard Form 25A (Payment Bond) are authorized for use for other than construction contracts.

(c) Subcontract bonds shall not be executed on Standard Forms 25 and 25-A. The forms set forth in § 18-16.805 (h) and (i) are authorized and may be adapted to fit specific cases.

(d) When a contractor supports a contract with an annual performance bond, in a cumulative penal sum, the contracting officer shall notify the office to which the contractor has furnished such bond so that the amount of coverage required may be recorded against the penal sum of the bond.

(e) Performance and payment bonds shall not be required unless the solicitation requires such bonds, or the requirement of such bonds is in the interest of the Government, and not prejudicial to other bidders or offerors. Where the solicitation requires such bonds, they shall not be waived except in the case of an otherwise acceptable bidder or offeror where such waiver will be favorable to the Government and the contract price will be reduced.

(f) When the requirement for performance and payment bonds is made by the terms of a contract, but the bonds are not furnished by the contractor within the time specified, the contracting officer shall notify the contractor that the contract will be terminated for default if the bonds are not furnished within the time specified in the contract clause providing for such termination (e.g., §18-8.707 par. (a)(ii)).

(g) Where a bid guarantee is not required and a performance or payment bond is required as a condition precedent to the formation of the contract, but is not furnished within the time specified, the contracting officer shall if the making of the award can be delayed without prejudice to other bidders notify the bidder that if the bond is not furnished within 10 days (or such other period as the contracting officer may specify) after receipt of the notice, his bid will not be considered for award.

(h) Requirements for additional bond or consent of surety in connection with contract modifications are prescribed in § 18-10.111.

§ 18-10.104-2 Performance bonds.

(a) Performance bonds shall not be used as a substitute for determinations of contractor responsibility as required by Subpart 18-1.9. Subject to this general policy, performance bonds may be required in individual procurements when, consistent with the following criteria, the contracting officer determines the need therefor. Justification for any such requirement must be fully documented.

(1) Where the terms of the contract provide for the contractor to have the use of Government material, property or funds and further provide for the handling thereof by the contractor in a specified manner a performance bond shall be required if needed to protect the Government's interests therein.

(2) Where the circumstances applicable to a particular procurement are such that for financial reasons a performance bond is necessary to protect the interests of the Government a performance bond shall be required. (See for example, § 18-26.402(c)(3).)

Where such bonds are authorized, the penal sum will usually be no less than 20 percent and only rarely will it exceed 40 percent of the total amount of the contract.

(b) Subject to the general policy stated in (a) above, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made by the head of the installation. A copy of each such determination covering a class of cases shall be forwarded to the Director of Procurement (Code KDP-1).

(c) Annual performance bonds may be used only in connection with contracts other than construction contracts. When such a bond in a cumulative penal sum is used and has been completely obligated by contracts in an appropriate amount equal to the penal sum thereof, an additional bond shall be obtained to cover additional contracts.

10. Section 18-10.105-3 is revised to read as follows:

§ 18-10.105-3 Fidelity and forgery bonds.

(a) Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of Government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained from the head of the installation.

(b) When a fidelity bond is required, a Primary Commercial Blanket Bond or a Blanket Position Bond in the penal sum of $10,000 will ordinarily be considered adequate. The Surety Association of America's standard bond form, or its equivalent, shall be used. When blanket fidelity insurance is purchased, carriers will be cautioned to apply all appropriate discounts.

(c) When a forgery bond or policy is required, a penal sum of $10,000 will ordinarily be considered sufficient. The Surety Association of America's standard depositors form of forgery bond or policy, or its equivalent, shall be used.

(d) Unless included as part of the bond form, the following provisions shall be included as riders or endorsements to fidelity and to forgery bonds or policies:

(1) A pro rata refund of the premium will be made in the event of cancellation by the insureds due to completion of the work under the contract;

(2) The contracting officer will be given notice prior to canceling or making any material change in the bond;

(3) After a loss has been sustained, the full amount of the bond shall be restored without additional premium charge to protect against undiscovered or future losses;

(4) The surety waives all rights to be subrogated, on payments of losses or otherwise, on any claim against the Government arising out of performance of a cost-reimbursement type contract; and

(5) In fidelity bonds only, the surety shall investigate all Class A employees as reported by the contractor and shall investigate all claims.

11. Section 18-10.105-4 is added:

§ 18-10.105-4 Other bonds.

Other types of bonds may be used only when, in the opinion of the head of the installation, such bonds are necessary or desirable in connection with the procurement of particular supplies or services.

12. Section 18.10.110 is revised to read as follows:

§ 18-10.110 Substitution of surety bonds.

A new surety bond may be substituted for a bond previously approved covering part or all of the same obligation. When the new surety is determined acceptable, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond.

13. Section 18-10.111-1 is revised to read as follows:

§ 18-10.111 Additional bond and increase of penalty.

§ 18-10.111-1 Additional bond.

Requirements for additional bond resulting from changes or modifications to construction contracts are prescribed by §§ 18-10.103-1(b) and 18-10.103-2(b). If a contract other than a construction contract for which a performance or payment bond has been executed is increased in price or modified to cover new or additional work, the contracting offi-

cer shall decide whether additional bond should be required in order to adequately protect the interest of the Government (the criteria of §§ 18–10.104–1 and 18–10.104–2 may be used as a general guide for this purpose). The following form for Consent of Surety and Increase of Penalty is authorized for contract modifications to all types of contracts that provide for an increase in the penal sums of bonds previously given by the original surety or sureties. If there has been more than one surety on the bond or bonds, use the word or words in brackets and provide for additional signatures as necessary.

CONSENT OF SURETY AND INCREASE OF PENALTY

Modification No. _____, dated _____.
Contract No. _____.

The surety [cosureties] hereby consents [consent] to the foregoing contract modification and agrees [agree] that its [their] bond or bonds shall apply and extend to the contract as thereby modified or amended. The principal and the surety [cosureties] further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by _____ dollars ($_____) and the penalty of the aforementioned payment bond or bonds is hereby increased by _____ dollars ($_____). *Provided, however,* That the increase of the liability of each cosurety resulting from this consent shall not exceed the sums set forth below:

Name of surety	*Increase in liability limit under performance bond*	*Increase in liability limit under payment bond*
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ [SEAL] Date of Execution: _____
(Signature of Individual Principal)[1]
_____
(Type Name of Individual Principal)
_____
(Business Address)

_____ Date of Execution: _____
(Corporate Principal)[1]
_____
_____
(Business Address)
By _____ [AFFIX CORPORATE SEAL]
(Signature of Person Executing)
_____
(Type Name and Title of Person Executing)

_____
(Corporate Surety)
_____
_____
(Business Address)
By _____ [AFFIX CORPORATE SEAL]
(Signature of Person Executing)
_____
(Type Name and Title of Person Executing)

(Add similar signature blocks for cosureties.)

[1] This Consent of Surety and Increase of Penalty shall be executed by the principal or his authorized representative concurrent with the execution of the attached modification to which it pertains. If the individual who signs the consent is signing in a representative capacity (e.g., attorney in fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power of Attorney or Certificate of Corporate Principal, as appropriate, shall be submitted with the consent.

14. Section 18–10.111–2 is revised to read as follows:

§ 18–10.111–2 Consent of surety.

The following consent of surety shall be obtained from the surety or sureties on existing bonds in connection with any amendment, modification, or supplemental agreement if:

(a) Additional bond is obtained from other than the original surety;

(b) No additional bond is required and (1) the modification is for new or additional work beyond the scope of the contract, or (2) the modification does not enlarge or diminish the scope of the contract, but changes the contract price (upward or downward) by more than $25,000 or 10 percent of the contract price; or

(c) Consent of surety is required in connection with a novation agreement (see § 18–26.402(b)(10)).

If there is more than one surety on the bond or bonds, the cosureties may either execute a separate consent in the form here prescribed, or they may join in executing a single such consent using the words in brackets and adding additional executions of sureties similar to that set forth in the form.

CONSENT OF SURETY

Modification No. _____, dated _____.
Contract No. _____.

The surety [cosureties] hereby consents [consent] to the foregoing contract modification and the surety [sureties] agrees [agree] that its [their] bond or bonds shall apply and extend to the contract as thereby modified or amended.

_____ Date of Execution: _____
(Corporate Surety)
_____ [AFFIX CORPORATE SEAL]
_____
(Business Address)
By _____
(Signature of Person Executing)
_____
(Type Name and Title of Person Executing)

(Add similar signature blocks for cosureties.)

15. Section 18–10.111–3 is added:

§ 18–10.111–3 Additional bond—New surety.

If additional bond coverage is required and will be furnished in whole or in part by a new surety, such surety must furnish its first bond coverage on a standard bond form (Standard Form 25 or 25–A, as appropriate).

16. Section 18–10.112 is revised to read as follows:

§ 18–10.112 Execution and administration of bonds and consents of surety.

(a) *Execution.* Several prescribed forms for bonds and related documents are listed in § 18–16.805. Bonds and related documents executed on such forms shall comply with the instructions accompanying each form. The IFB or RFP may provide for execution and submission of more than one copy if desired. When required by Instruction No. 2 of the standard bond forms, the evidence of authority of a principal's representatives shall be a duly executed power of attorney reciting that the individual executing the bond or consent of surety is authorized to do so. A corporation, in lieu of such power of attorney, may submit a "Certificate as to Corporate Principal" in the format prescribed in paragraph (c) of this section.

(b) *Administration.* It is the responsibility of the contracting officer to obtain all bonds required by law and regulation. The Treasury Department list of corporate sureties certified by the Secretary of the Treasury as being acceptable as sureties on Federal bonds, and provision for the distribution of up-to-date copies of the list, are discussed in § 18–10.201–1. All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. The contracting officer shall determine whether the corporate surety which executed the bonds appears on the latest Treasury Department list of acceptable sureties. If the name of the surety does not appear on the list, the Director of Procurement, NASA Headquarters (Code KDP–1) will be advised by the most expeditious means in order to determine from the Surety Bond Section, Treasury Department, whether the corporate surety has been approved subsequent to the issuance of the latest list. When the surety on a bond is not acceptable, the contracting officer shall return the bond to the bidder by letter, advising that the surety on the bond is not acceptable because of lack of Treasury Department

approval. When time permits and when it would be to the best interest of the Government, the bidder may be permitted a specific period of time in which to submit an acceptable bond. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see § 18–8.602–4(a)).

(c) *Certificate as to corporate principal.* When a certificate as to corporate principal is to be furnished, the following format shall be used.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that
(Name printed)
I am the _____ of the corporation
(Office held)
named as principal in the (performance) (and) (payment) bond(s); that _____ _____ who signed the said bond(s) on behalf of the principal was then _____
(Capacity in which bond was executed)
of said corporation; that I know his signature and that his signature thereto is genuine; and that said bond(s) was (were) duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ [AFFIX CORPORATE SEAL]

(d) *Name of principal.* When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm and the phrase "a partnership composed of." If a principal is a corporation, the State of incorporation must appear.

(e) *Date of bond.* A performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(f) *Continuation sheet.* The Standard Form 25–B (Continuation Sheet) is prescribed for use when there are more than seven sureties on a bid, performance, or payment bond. It shall also be used when there are cosureties on an annual bid or performance bond.

17. Section 18–10.201–1 is revised to read as follows:

§ 18–10.201–1 Corporate sureties and cosureties.

(a) *Corporate sureties.* In connection with contracts for supplies, services, or construction to be delivered or performed in the United States, its possessions (other than the Canal Zone), or Puerto Rico:

(1) Solicitations shall not require that only corporate sureties may be furnished or that a particular corporate surety be furnished, except as may be otherwise specifically provided (e.g., position schedule bonds may be obtained only from corporate sureties); and

(2) Any corporate surety offered for a bond furnished the Government, or furnished pursuant to a Government contractual requirement, where the contracting officer has authority to approve the sufficiency of the surety, must appear on the Treasury Department List (TD Circular 570) and the amount of the bond must not be in excess of the underwriting limits stated in that list. The Director of Procurement, NASA Headquarters will obtain and distribute up-to-date copies of this list.

In connection with contracts to be performed in the Canal Zone, corporate Panamanian surety companies which are acceptable on bonds required by the Panama Canal Company may be accepted in addition to the corporate sureties appearing on the Treasury List. The acceptability of Panamanian sureties shall be subject to the conditions and restrictions (including any requirement for security deposits) similar to those imposed by the Panama Canal Company, and to a determination by the contracting officer that the amount of the bond is commensurate with the underwriting capacity of the surety. For contracts to be performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if it is determined by the contracting officer that it is impracticable for the contractor to use Treasury listed sureties.

(b) *Corporate cosureties.* More than one corporate surety may be accepted as cosurety upon any recognizance, stipulation, bond, or undertaking in connection with contracts for supplies, services, or construction. In no case, however, shall the liability of any such cosurety exceed the maximum penal sum which it is qualified to underwrite on any one obligation. It is not necessary that each corporate surety obligate itself for the full amount of the bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves jointly and separately for the purpose of allowing a joint action or actions against any or all of them. Where the bond is to be executed by two or more corporate sureties, Standard Form 25 shall be used in the case of a performance bond and Standard Form 25–A in the case of a payment bond. On bonds covering supply or service contracts where the amount of the bond exceeds the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required reinsurance underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts.

(c) *Termination of authority to qualify as surety.* The Treasury Department issues supplements to the Treasury Department Circular 570, notifying all Federal agencies of the termination of the authority of a specified corporate surety company to qualify as a surety on Federal bonds. These supplements shall be obtained and distributed by the Director of Procurement, NASA Headquarters. Upon receipt of notification of termination of a company's authority to qualify as surety on Federal bonds, each contracting officer concerned shall secure new bonds with acceptable sureties in lieu of any outstanding bonds with the named company.

18. Section 18–10.201–2 is revised to read as follows:

§ 18–10.201–2 Individual sureties.

(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than position schedule bonds. Individual sureties shall be citizens of the United States, except that if the contract and bond are executed in any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, or any other possession of the United States, such surety need only be a permanent resident of the place of execution of the contract and bond.

(b) *Number.* If individual sureties are used, there shall be at least two responsible individuals on each bond.

(c) *Extent of liability.* The liability of each individual surety shall extend to the entire penal amount of the bond.

(d) *Justification.* The contracting officer, in evaluating bonds and consents of surety underwritten by individual sureties, must first ascertain that all documents, including the Affidavits of Individual Surety required by Instruction No. 4b on the reverse of Standard Form 24, "Bid Bond," and Instruction No. 3b on the reverse of Standard Form 25, "Performance Bond," and Standard Form 25A, "Payment Bond," have been completely filled out and are properly executed. The contracting officer must next ascertain that each individual surety, underwriting a bond or consenting to an increase in the penal amount of a bond previously furnished, justifies his net worth "in a sum not less than the penalty of the bond" as required by Instruction No. 4 on the reverse of Standard Form 28, "Affidavit of Individual Surety." Since individual sureties are jointly and severally liable in the event of default by the principal, each individual surety must list on Standard Form 28 a net worth at least equal to the total penal amount of the bond or consent of surety. Example: If performance and payment bonds on a construction contract have penal amounts of $4,000 and $2,000, respectively, each individual surety must show a net worth of at least $6,000 to have the contracting officer accept his underwriting of such bonds. Normally, net worth will be the amount indicated by the individual surety on line g, block 7, of Standard Form 28. However, the contracting officer is expected to consider all relevant information furnished by the individual surety on Standard Form 28 and make an independent determination of the individual surety's net worth based on the contracting officer's own best judgment. Example: Normally the "fair value" of real estate is a more realistic figure than the "assessed value" for taxation purposes. However, there may be situations where the reverse is true, for the purpose of determining net worth, in which case the contracting officer may determine net worth is a figure other than that entered on line g, block 7 of Standard Form 28. The contracting officer also should scrutinize closely the information entered in block 10 on Stand-

ard Form 28 as the amount of outstanding bond obligation of an individual surety may have a substantial bearing on the financial position of such individual surety. The contracting officer may determine that the total amount entered in block 10 should be deducted from the net worth figure entered on line g, block 7, to arrive at a more realistic net worth or he may determine to deduct nothing, or only a portion of the amount entered in block 10 if upon inquiry he discovers that the contracts on which the bonds were written are completed in part and suppliers and material men paid in part. Affidavits should be scrutinized closely by a contracting officer in any case where an individual surety is underwriting a bond for a principal for whom that surety has underwritten other outstanding bonds. If the contracting officer cannot make a determination of net worth on the basis of information furnished on Standard Form 28, he should require the individual surety to furnish additional information. As a general rule, the contracting officer should not require extrinsic evidence of an individual surety's net worth (other than Standard Form 28) unless Standard Form 28 is not filled out completely or properly, or unless the contracting officer has reason to believe that the individual surety's statements on Standard Form 28 do not reflect his true net worth.

(e) *Stockholders as sureties.* On any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as cosurety on the bond: *Provided,* That his net worth exclusive of his stock holdings or other interests, such as loans, in the corporation is equal to the amount for which he justified; *And provided further,* That such fact is expressly stated in his affidavit of justification.

19. Section 18–10.201–4 is revised to read as follows:

§ 18–10.201–4 Substitution or replacement of surety.

In the case of financial embarrassment, failure, or other disqualifying cause on the part of a surety substitution of a new surety is required. In other cases, substitute sureties may be accepted, when consistent with the Government's interest (see § 18–10.110).

20. Section 18–10.202–2 is revised to read as follows:

§ 18–10.202–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of furnishing a certified or cashier's check, a bank draft, a Post Office money order, or currency, in an amount equal to the penal sum of the bond, which the contracting officer will immediately deposit with the appropriate activity named in § 18–10.202. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the Treasurer of the United States.

21. Section 18–10.401 is revised to read as follows:

§ 18–10.401 Policy.

Ordinarily, NASA is not concerned with the insurance programs of fixed-price contractors. However, NASA may be concerned with a contractor's insurance program where special circumstances exist. Examples of special circumstances are:

(a) Where the contractor is engaged principally in Government work;

(b) Where the contractor has a segregated operation which is engaged principally in Government work;

(c) Where Government - furnished property is involved;

(d) Where the work is performed within a Government installation;

(e) Where the Government desires to assume risks for which the contractor ordinarily obtains commercial insurance;

(f) Where a substantial amount of work is being performed under a fixed-price incentive contract; and

(g) Where adequate coverage is not available in the commercial market at a reasonable cost.

22. Section 18–10.403 is revised to read as follows:

§ 18–10.403 Workmen's compensation and war hazard insurance overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in work outside the United States, including any employee engaged (1) in the performance of a public work contract or (2) in the performance of any contract approved or financed pursuant to the Foreign Assistance Act of 1961 other than contracts approved or financed by the Development Loan Fund, or contracts exclusively for the furnishing of materials or supplies. As used in this paragraph (a), a "public work" contract includes any contract for a fixed improvement or any project whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. When the Defense Base Act applies, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq.), to afford protection to employees against the hazards of war risks (injury, death, capture, or detention). Under this plan, once a contract employer has provided the Workmen's Compensation coverage required by the Defense Base Act (by insurance policy or self-insurance program), his employees automatically receive War Hazard Risk protection. An employer need not insure against War Hazard Risk, however, since such war risk benefits are provided at no cost to the employer by the Bureau of Employee's Compensation, Department of Labor.

(b) The following clause shall be included in all construction contracts to be performed outside the United States.

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (APRIL 1960)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(c) Upon the recommendation of the Administrator, the Secretary of Labor may waive the applicability of the Act with respect to any contract, subcontract, or subordinate contract, work location under such contract, or classification of employees. Applications for waivers shall be submitted to the Administrator, through the Director of Procurement, NASA Headquarters.

The request for waiver shall include the following:

(1) Name of contractor;

(2) Business mailing address of contractor;

(3) Contract number;

(4) Date of award;

(5) Geographic location where contract will be performed;

(6) Name of insurance company providing the Defense Base Act coverage;

(7) Nationality of employees to whom waiver is to apply; and

(8) Reason for waiver.

(d) (1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees in accordance with procedures set forth in (c) above, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workman's compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of Part 18–15 particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workmen's compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture, or detention. At the option of the Director of Procurement, NASA Headquarters, or his designee, either the cost of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. If it is decided that the contractor shall not purchase insurance against this liability, the clause in § 18–10.502(c) shall be included in the contract.

(e) If a contract would otherwise be subject to paragraph (a) of this section,

but paragraph (d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of §§ 18–10.502 (b) and (c) apply, and the following clause shall be included in the contract.

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (JUNE 1972)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq.). On behalf of such waived employees the Contractor shall be subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

23. Section 18–10.404 is revised to read as follows:

§ 18–10.404 Aircraft—ground and flight risk.

(a) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in paragraph (b) of this section include the following clause:

GROUND AND FLIGHT RISK (JUNE 1972)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open," during "operation," and in "flight," as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) Aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled: *Provided,* That an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

Including all property installed therein, or in the process of installation, or temporarily removed from such aircraft: *Provided, however,* That such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of takeoff from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical takeoff aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises: *Provided, however,* That aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, and navigator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the Contracting Officer finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the Contracting Officer finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 a.m. on the 15th day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the Contracting Officer shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been

corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the Contracting Officer;

(iii) While in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(iv) To the extent that such damage, loss or destruction is in fact covered by insurance;

(v) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure unless such damage is the result of other loss, damage, or destruction covered by this clause: *Provided, however,* In the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply;

(vi) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to, or loss or destruction of aircraft in "flight," the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in his possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and, further, except in cases covered by (e) above, the Contractor should furnish to the Contracting Officer a statement of:

(i) The damaged, lost, or destroyed aircraft.

(ii) The time and origin of the damage, loss or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (h) and this contract shall be modified in writing accordingly.

(i) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(b) (1) In paragraph (b) of the foregoing clause, certain of the defined terms may be modified by insertion of appropriate additional definitions in the Schedule in accordance with the following. The purpose of the clauses to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the foregoing clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the Schedule as set forth below.

(i) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(ii) The definition of "in the open" may be modified to include "hush houses," test hangars, and comparable structures, and other designated areas;

(iii) "Contractor's premises" shall be expressly defined in the Schedule and shall be limited to those locations where aircraft, as defined in the above clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the foregoing clause, if the best estimate of premium costs which would be included in the contract price for insurance cov-

erage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume such risk, the foregoing clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the "Flight Risks" clause in § 18–10.504, suitably adapted for use in a fixed-price type contract, shall be used.

(3) Subparagraph (d) (iii) of the above clause may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

24. Section 18–10.501–1 is revised to read as follows:

§ 18–10.501–1 Workmen's compensation and employers' liability insurance.

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. Related to workmen's compensation, and included in the same insurance policy, are (1) Employers' Liability; (2) Workmen's Compensation for Occupational Disease; and (3) Employers' Liability for Occupational Disease.

(b) Workmen's compensation is an obligation imposed upon an employer by the workmen's compensation law of a State or by the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901). An employer subject to a workmen's compensation law can provide for his obligation by insuring either with a commercial insurance company or a State fund, or by self-insuring. In a few States, commercial insurance is not permitted and the State fund is the exclusive carrier. If the employer desires to self-insure, he must qualify himself as a self-insurer with the appropriate State authority. However, such approval is only one of the elements considered by NASA in its approval of a self-insurance plan. Information may be required as to the procedures followed in operating the self-insurance plan and the method of accruing the operating costs thereof prior to granting NASA approval of the self-insurance plan.

(c) Occupational disease insurance is related to workmen's compensation insurance, and is usually required under applicable law. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational diseases shall be required under the employers' liability section of the insurance policy. However, such additional insurance will not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage.

(d) Employers' liability is the liability imposed upon the employer by law for damages on account of personal injuries, including death resulting therefrom, sustained by his employees by reason of accidents.

(e) The insurance coverage with respect to employers' liability and occupational disease shall be required with a minimum limit of $100,000 per incident.

(f) With respect to workmen's compensation insurance overseas, pursuant to the Defense Base Act, as amended (42 U.S.C. 1651), the clause set forth in § 18–10.403(b) shall be included in all construction contracts, as defined in § 18–10.101–6, to be performed outside the United States.

25. Section 18–10.501–5 is added:

§ 18–10.501–5 Vessel collision liability and protection and indemnity liability insurance.

Where vessels are used in connection with the performance of the contract, such insurance shall be required whenever deemed necessary by the installation concerned.

26. Section 18–10.502 is revised to read as follows:

§ 18–10.502 Self-insurance.

(a) Self-insurance may be approved by the contracting officer in lieu of the insurance requirement for one or more of the mandatory coverages required by §§ 18–10.501–1, 18–10.501–2, 18–10.501–3, 18–10.501–4, and 18–1.501–5 provided that:

(1) The contractor has maintained the practice of self-insurance in respect to such coverage or risk for a period of not less than 3 years;

(2) Adequate safety inspection and engineering programs are carried on by the contractor;

(3) The contractor has an effective and established policy for claims investigation;

(4) The contractor has established a plan of funding so that the annual cost of "loss payments" remains reasonably constant;

(5) The charges to be made against the contract for the cost of the self-insurance program may reasonably be expected to be less than the charge for an equivalent program of insurance; and

(6) The Government contracts will share equitably in any release of reserve funds.

Self-insurance programs which do not meet the foregoing conditions shall be submitted for approval to the Director of Procurement, NASA Headquarters.

(b) When the clause at § 18–10.403(e) is required, the following clause shall also be inserted in the contract, but only if the Director of Procurement or his designee has decided that the contractor shall not purchase insurance against the liability described in § 18–10.403(d) (2).

REIMBURSEMENT FOR WAR HAZARD LOSSES (JUNE 1972)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than 1 year after the expiration or termination of this contract, unless the time shall be extended by the Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractors to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(c) The Schedule of each contract containing the clause in paragraph (b) of this section shall contain (1) the estimated cost for war hazard losses, (2) the clause at § 18–7.203–4(a) appropriately limited to cover allowable war hazard cost, (3) the Examination of Records by the Comptroller General clause (§ 18–7.104–15), and (4) an entry similar to the following.

The portion of this contract providing for the Contractor to afford protection to his employees and subcontractors to their employees against war hazard risks (see the clauses entitled Reimbursement for War Hazard Losses and Workmen's Compensation and War Hazard Insurance Overseas) is on a cost-reimbursement, no fee basis, notwithstanding the basis of the remainder of the contract.

(d) The estimated cost for war hazard losses will be based upon estimates ar-

rived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war hazard risks, the level of benefits applicable to such employees, location, nature of the risks to which the contractor's employees are exposed. The amount allotted to the contract will initially be kept as small as reasonably feasible. As reports are received indicating the need to increase the allotment to a particular contract, these will be evaluated and the allotment increased as necessary. When negotiating for the inclusion in a contract of provisions applicable to war hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor, the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance agreements pursuant to § 18–15.107 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor commencing payments and being reimbursed therefor prior to the time he is able to work out, in a proper case, lump sum settlement of his obligation.

27. Section 18–10.504 is revised to read as follows:

§ 18–10.504 Aircraft-flight risk.

(a) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in paragraph (b) of this section, include the following clause.

FLIGHT RISKS (JUNE 1972)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (g)(1) of the Government Property clause and paragraph (c) of the Insurance—Liability to Third Persons clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto: *Provided; however*, That such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical takeoff aircraft, "flight" shall commerce upon disengagement from any launching platform or device and continue until the aircraft has been reengaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the copilot and, unless otherwise specifically provided in the Schedule, the flight engineer, and navigator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly: *Provided*, In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(b) In the foregoing clause, the definition of "aircraft" may be appropriately modified in the Schedule if the contract covers helicopters, vertical takeoff aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

PART 18–12—LABOR

1. Subpart 18–12.8 is revised in its entirety as follows:

Subpart 18–12.8—Equal Employment Opportunity

§ 18–12.800 Scope of subpart.

This subpart sets forth policies and procedures for carrying out the requirements of Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), Executive Order No. 11375 of October 13, 1967 (32 F.R. 14303), and the rules and regulations of the Secretary of Labor (41 CFR, Chapter 60).

§ 18–12.801 Policy.

(a) Executive Orders 11246 and 11375 require that all Government contracting agencies shall include the Equal Opportunity clause in all nonexempt Government contracts and shall act to insure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

(b) Disputes related to the Equal Opportunity Program shall be handled pursuant to the provisions of the appropriate Equal Opportunity clause in Government contracts, agreements, and subcontracts, which specify that the contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor. Those rules, regulations, and relevant orders prescribe particular procedures for handling disputed matters.

(c) No contract or modification thereto involving new procurement shall be entered into and no subcontract shall be approved with a company which has been declared ineligible under, or found to be in noncompliance with, the Equal Opportunity Program, in accordance with the procedures set forth in this subpart.

§ 18–12.802 Definitions.

As used in this subpart the following terms have the meanings stated below:

(a) "Administering agency" as used in the clause means any department, agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(b) "Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a federally assisted construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(c) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

(d) "Contract" means any Government contract or any federally assisted construction contract.

(e) "Director, OFCC," means the Director, Office of Federal Contract Compliance, U.S. Department of Labor, or any person to whom he delegates authority.

(f) "Equal Opportunity clause" means the contract provisions as set forth in § 18–12.804 (a) or (b), as appropriate.

(g) "Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(h) "Government contract" means any agreement or modification thereof between any contracting officer of NASA and any person for the furnishing of

supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this paragraph (h) includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depositary. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, and (2) federally assisted construction contracts, and (3) contracts for the sale of personal property by the Government, and for the sale or purchase of real property by the Government.

(i) "Order" means Parts II, III, and IV of Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), and any Executive order amending such order, and any other Executive order superseding such order.

(j) "Recruiting and training agency" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(k) "Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor or other participating party meets a demand or performs a function relating to the contract or subcontract.

(l) "United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

(m) "Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or (2) under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(n) "Subcontractor" means any person holding a subcontract and any person who has held a subcontract subject to the order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(o) "Contractor Equal Opportunity Office (CEO)" means the NASA office which is responsible for the NASA Contract Compliance Program.

(p) "Compliance agency" means the Department or Agency designated by the Department of Labor to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the Equal Employment Opportunity Program as the Department of Labor may determine to be appropriate.

§ 18–12.803 Administration.

(a) The Secretary of Labor is responsible for the administration of Parts II and III of Executive Order No. 11246 and for the adoption of such rules and regulations and the issuance of such orders as he deems necessary and appropriate to achieve the purposes thereof. The Secretary of Labor has established within the Department of Labor an Office of Federal Contract Compliance (OFCC) under a Director who has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the order except the power to issue rules and regulations of a general nature.

(b) The Director, Equal Employment Opportunity Office, has been designated the NASA Contract Compliance Officer (CCO). He is responsible for securing compliance with the provisions of Parts II and III of the Executive order and with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by NASA and for exercising overall supervision of NASA policies relating to contract compliance operations, for carrying out actions relating to the imposition of sanctions and for promulgating, within NASA, the names of prime contractors and subcontractors who have been declared ineligible for Government contracts by the Director, OFCC, or by an agency.

(c) Heads of installations are responsible for assuring that the provisions of this Subpart 18–12.8 are carried out within their respective components and for cooperating with and assisting the NASA Contract Compliance Officer and his deputy in fulfilling their responsibilities.

(d) The Director, Contractor Equal Opportunity Division, NASA Headquarters has been designated the NASA Deputy Contract Compliance Officer (DCCO) and, under policy guidance from the NASA Contract Compliance Officer (CCO), is responsible for directing operations to assure compliance by contractors and subcontractors with the provisions of the Equal Opportunity clause and the Executive order and with the rules, regulations, and orders of the Secretary of Labor issued thereunder.

(e) Contractor Equal Opportunity (CEO) offices have been established at both Headquarters and field installations and are responsible for the following:

(1) Developing information on contractor and subcontractor compliance, including the conduct of a program of compliance reviews, the investigation of complaints and the conduct of preaward reviews as provided for in the Executive order, the regulations of the Secretary of Labor, this Subpart 18–12.8, and such other procedures for developing information on contractor and subcontractor compliance as may be prescribed;

(2) Furnishing directly to the Headquarters, CEO office for final determination, in the case of preaward compliance reviews, their findings and recommendations as to whether the prospective contractors and known first-tier subcontractors are eligible for award;

(3) Securing compliance by contractors and subcontractors with the provisions of the Equal Opportunity clause through persuasion, negotiation and conciliation;

(4) Developing and maintaining liaison with the community and other Government and private agencies involved in equal opportunity activities;

(5) Making referrals and acting as liaison with the appropriate compliance agency; and

(6) Advising the Procurement Officer of situations which could have an impact on procurement or program objectives.

§ 18–12.804 Equal opportunity clauses.

(a) *Government contracts.* The following clause shall be included in all contracts (and modifications thereof if the clause was not included in the original contract), unless exempted in accordance with § 18–12.805.

EQUAL OPPORTUNITY (OCTOBER 1971)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government

contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* The following clause shall be included as a condition of any grant, contract, loan, insurance or guarantee involving federally assisted construction, unless exempted in accordance with § 18–12.805.

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION) (APPLICANT) (OCTOBER 1971)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity clause:

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)

During the performance of the contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above Equal Opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) The following clause shall be inserted in all contracts containing a "Subcontracts" clause prescribed by § 18–23.201 which are in excess of $1 million.

EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTORS (DECEMBER 1971)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(d) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the Equal Opportunity clause in each of its nonexempt subcontracts.

(e) *Incorporation by operation of the order and this subpart.* By operation of the Executive order, the Equal Opportunity clause shall be considered to be a part of every contract and subcontract required by the order and this subpart to include such a clause whether or not it is physically incorporated in such contracts.

(f) *Incorporation by reference.* The Equal Opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than $50,000 and such other contracts as the Director, Office of Federal Contract Compliance, U.S. Department of Labor, may designate.

(g) *Adaptation of language.* Prime contractors and subcontractors may make necessary changes in the language of the Equal Opportunity clause to identify properly the parties and their undertakings.

(h) *Notices To Be Posted.* (1) The Equal Opportunity clauses in paragraphs (a) and (b) of this section require prime contractors and subcontractors to post notices which set forth the provisions of the clauses. Unless alternative notices are prescribed by the Director, OFCC, or by the Director, CEO, NASA Headquarters, with the approval of the Director, OFCC, the contracting officer shall furnish to contractors appropriate numbers of copies of the notice entitled "Equal Employment Opportunity is the Law." The notices are available in either

English or Spanish versions. Stock numbers for these notices, as listed in the GSA Stores Stock Catalog, are 7690-926-8988 (English) and 7690-926-9118 (Spanish). Contracting officers shall obtain these notices in accordance with NASA procedures. Prime contractors shall obtain from contracting officers copies for first and other tier subcontractors as necessary.

(2) The requirement of paragraph (3) of the Equal Opportunity clause shall be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment and representatives of each labor union or other organization representing his employees with which he has a collective bargaining agreement or other contract or understanding.

§ 18-12.805 Exemptions.

(a) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, are exempt from the requirements of the Equal Opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount thereof rather than the amount of the Federal financial assistance shall govern. Indefinite delivery type contracts and subcontracts thereunder, basic agreements and basic ordering agreements shall include the Equal Opportunity clause, except when the contracting officer (in the case of subcontractors, the prime contractor or subcontractors issuing the subcontract) determines that the amount to be ordered is not expected to exceed $10,000 in any single year. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the Equal Opportunity clause shall be incorporated into such contract, subcontract, basic agreement or basic ordering agreement whenever the amount of a single order or procurement action exceeds $10,000. Once the clause is incorporated, the contract, subcontract, basic agreement, or basic ordering agreement shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered, in any year. No agency, contractor or subcontractor shall procure supplies or services in less than usual quantities to avoid applicability of the Equal Opportunity clause.

(b) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the Equal Opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States. See § 18-12.808-2(c) for procedures in cases where employees are recruited in the United States.

(c) *Contracts with State or local governments.* The requirements of the clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Contracts exempted by the Administrator in the interest of national security.* (1) Any requirement set forth in this subpart shall not apply to any contract or subcontract whenever the Administrator determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security.

(2) *Request for exemption.* The contracting officer shall prepare a detailed justification for such determination which shall be submitted to the NASA Contract Compliance Officer (CCO). The CCO, with the concurrence of the appropriate Institutional Director, shall submit the request for exemption to the Administrator for approval, and shall notify the Director, OFCC, within 30 days of such a determination.

(e) *Specific contracts and facilities exempted by the Director, OFCC.*—(1) *Specific contracts.* The Director, OFCC, may exempt an agency or person from requiring the inclusion of any or all of the Equal Opportunity clauses in any specific contract or subcontract when he deems that special circumstances in the national interest so require. He may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(2) *Facilities not connected with contracts.* The Director, OFCC, may exempt from the requirements of the clause any of a prime contractor's or a subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

(3) *Special circumstances.* The Director, OFCC, may exempt a contract or subcontract when he finds that special circumstances indicate that use of either of the clauses set forth in § 18-12.804 in the contract or subcontract would not be in the national interest.

(4) *Request for exemption.* Prior to omitting or modifying the clause under subparagraphs (1), (2), or (3) of this paragraph (e), the contracting officer shall submit a detailed justification for the proposed action in accordance with the procedures set forth in § 18-1.109.

(5) *Withdrawal of exemption by the Director, OFCC.* When any contract or subcontract is of a class exempted under this paragraph § 18-12.805, the Director, OFCC, may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal. In procurement entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 18-12.806 Equal opportunity notices and certification provisions.

(a) *Preaward compliance review.* Each solicitation, written or oral, for nonexempt contracts estimated to be for $1 million or more shall advise bidders or offerors that prior to the award of a contract the proposed contractor and his known first-tier subcontractors with proposed subcontracts of $1 million or more shall be subject to an EEO compliance review as follows:

PREAWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (OCTOBER 1971)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective July 1, 1968, an award in the amount of $1 million or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of $1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(b) *Representations.* Insert the following provisions as applicable:

(1) When not contained on the solicitation form, the following:

(A) Certification of Nonsegregated Facilities.

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.) By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical

certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). (October 1971)

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

(B) Equal Opportunity.

EQUAL OPPORTUNITY (OCTOBER 1971)

Offeror ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 1114; that he ☐ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

(2) When the contract is for other than construction and is not exempt from the Equal Opportunity clause, insert the following:

AFFIRMATIVE ACTION PROGRAM (OCTOBER 1971)

(The following certification shall be completed by each offeror whose offer is $50,000 or more and who has 50 employees or more.) The offeror certifies that he ☐ has, ☐ has not, developed and maintained at each of his establishments Equal Opportunity Affirmative Action Programs, pursuant to 41 CFR 60.2.

(3) When the contracts are not exempt from the Equal Opportunity clause, insert the following:

CERTIFICATION OF EQUAL EMPLOYMENT COMPLIANCE (OCTOBER 1971)

By submission of this offer, the offeror certifies that, except as noted below, up to the date of this offer no advice, information, or notice has been received by the offeror from any Federal Government agency or representative thereof that the offeror or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order No. 11246 of September 24, 1965, Executive Order No. 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor (41 CFR, Chapter 60) and specifically as to not having an acceptable affirmative action program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further certified and agreed that should there be any change in the status of circumstances certified to above between this date and the date of expiration of this offer or any extension thereof, the Government Contracting Officer cognizant of this procurement will be notified forthwith.

§ 18–12.807 Affirmative action programs.

§ 18–12.807–1 General.

Except as provided in § 18–12.805, each prime contractor and each subcontractor with 50 or more employees and a contract or subcontract of $50,000 or more is required to develop a written affirmative action compliance program for each of his establishments within 120 days from the commencement of his first such Government contract or subcontract.

§ 18–12.807–2 Contracts other than construction contracts.

An acceptable affirmative action program for applicable contractors other than construction contractors shall include:

(a) An analysis of areas in which the contractor is deficient in the utilization of minorities (41 CFR 60–2.10);

(b) An analysis of all major job categories at the facility, using the nine factors listed in 41 CFR 60–2.11(a) (1) through (9), with explanations if minorities are currently being underutilized in any one or more job categories;

(c) Support data for the analysis provided by paragraphs (a) and (b) of this section (41 CFR 60–2.11(c)); and

(d) The eight program ingredients listed under 41 CFR 60–2.12 (a) through (h), and goals and timetables (41 CFR 60–2.11(b)), to correct the deficiencies and thus to increase materially the utilization of minorities at all levels and in all segments of the contractor's work force where deficiencies exist (41 CFR 60–2.10).

§ 18–12.807–3 Construction contracts.

An acceptable affirmative action program for construction contractors shall meet the requirements of 41 CFR 60–1.40, including approved local plans. Such plans may require prospective contractors on projects in certain geographic areas to state, in their bids or proposals, percentage goals for minority employment which they will endeavor to meet during contract performance. Local plans which have been issued will be listed in Procurement Regulation Directives. Such plans will be sent to the principally affected procurement offices. Any other procurement office contemplating a procurement involving construction in excess of $10,000 within geographic areas covered by a local plan shall request instructions prior to issuance of a solicitation. Such requests shall be forwarded to the installation CEO office.

§ 18–12.808 Compliance review and clearances.

§ 18–12.808–1 General.

The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to insure that applicants are employed, and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment, without regard to race, color, religion, sex, or national origin. The review shall include an evaluation of the contractor's affirmative action program (AAP) as well as a sufficient examination of his practices and employment statistics to insure that his program identifies any deficiencies which may exist and that the program's goal and timetables established for their correction are realistic in accordance with 41 CFR Chapter 60. Responsibility for the conduct of compliance reviews has been assigned by the Director, Office of Federal Contract Compliance, to various Government agecies. Except where the compliance responsibility has been assigned to a department or agency other than NASA, the installation CEO office shall have the primary responsibility for the conduct of compliance reviews in accordance with the guidelines of the Director, OFCC. NASA shall also conduct compliance reviews in accordance with any special request or instructions of the Director, OFCC. Compliance reviews may also be conducted by the Director, OFCC. Compliance reviews shall be conducted by qualified specialists assigned to the equal opportunity program function.

§ 18–12.808–2 Contracting officers' responsibility for clearance.

(a) *Procurement actions of $1 million or more*—(1) *Prime contract clearance.* Except as provided in paragraph (d) (2) of this section, the contracting officer shall request the installation CEO office to determine whether a company is in compliance and the company therefore is eligible for award, prior to effecting any procurement action (including awards and modifications of indefinite quantity and requirements type contracts or execution, extension or continuation of basic ordering agreements) which obligates $1 million or more, or is expected to result in an aggregate obligation of $1 million or more.

(2) *Subcontract clearance.* Clearance shall be obtained prior to the award of any first-tier subcontract in an estimated or actual amount of $1 million or more when such subcontract requires the contracting officer's consent or would require such consent were it not for an approved purchasing system (see § 18–23.201).

(b) *Contracts between $10,000 and $1 million.* In determining the contractor's responsibility for award of a contract in an estimated or actual amount between $10,000 and $1 million, the contracting officer shall request the installation CEO office to ascertain whether the prospective contractor is currently in violation of the Equal Opportunity clause or has not developed an acceptable affirmative action program at each of his establishments. Such inquiry shall be requested 10 days prior to award. The request and the response may be made by telephone or other informal means subject to confirmation in writing. Award shall not be made to a company that is found to be

in noncompliance. However, an award may be made, notwithstanding the company's failure to have developed an acceptable affirmative action program, if the contracting officer determines that the proposed contract is for less than $50,000 or that the company has fewer than 50 employees and, in either case, has not previously been required to develop an affirmative action program.

(c) *Procedures for requesting preaward clearance for contracts of $1 million or more.* (1) The contracting officer shall request preaward clearance for the prime contract and all known first-tier subcontracts of $1 million or more from the CEO office of the installation awarding the prime contract or where the contract is to be performed. When NASA is not the compliance agency, the CEO office of the NASA installation shall make the necessary referral and inform the contracting officer. When it is necessary to make the request by telephone, written confirmation shall follow.

(2) When the contract work is to be performed outside the United States with employees recruited within the United States, the preaward review should be requested from the CEO office of the installation making the award. The CEO office will refer the request to the compliance agency servicing the contractor's corporate home or branch office within the United States, or the corporate location where personnel recruiting is handled, if different from the foregoing. In cases where the proposed contractor has no corporate office or location within the United States, the preaward action should be based on the location of the recruiting agency, as defined in § 18–12.802(j), in the United States.

(3) When the compliance agency is unknown, the CEO office shall contact the Headquarters, CEO office by telephone for information as to the appropriate compliance agency.

(4) In making a request for formal preaward clearance, the contracting officer shall furnish the following information:

(i) Name and address of the prospective prime contractor, any corporate affiliate thereof at which work is to be performed, and each known first-tier subcontractor with a proposed subcontract estimated at $1 million or more, including, if known, the Standard Industrial Classification (SIC) code of the contractor establishment(s);

(ii) Anticipated date of contract award;

(iii) Information as to whether the prime contractor and known first-tier subcontractors have previously held any Government contracts or subcontracts or federally assisted construction contracts;

(iv) Information as to whether the prime contractor has previously filed Employer Information Report SF–100;

(v) Place or places of performance of the prime and first-tier subcontracts estimated at $1 million or more, if known;

(vi) The anticipated dollar category for the prime and each subcontract, as follows:

(*a*) Category A, $1 million up to and including $2 million;

(*b*) Category B, between $2 million and up to and including $50 million;

(*c*) Category C, over $50 million; and

(vii) When the request is for formal clearance of a proposed award under $1 million, the source and nature of the information causing the contracting officer to seek preaward clearance.

(d) *Time for requesting preaward clearance.*

(1) The contracting officer shall request a formal preaward clearance as soon as it is reasonably certain who the successful contractor will be, so as to provide as much time as possible prior to award for the CEO office or the compliance agency to conduct necessary reviews. Except as provided in (2) below, formal preaward clearance shall be requested at least 30 calendar days prior to the proposed contract award date. If the CEO office is unable to provide a compliance review of the prospective prime contractor and obtain necessary clearance for first-tier subcontractors within the time requested, the CEO office shall advise the contracting officer within 5 working days of receipt of the request of the estimated time required. Additional time shall be granted to the CEO office unless award is authorized in accordance with paragraph (d)(2) of this section.

(2) When the procedures specified in (1) above would delay award of a contract beyond the time necessary for the Government to make awards or beyond the time specified in the bid or proposal or extension thereof, the contracting officer shall immediately inform the CEO office as to the expiration date of the bid or proposal or the required date of award and request clearance be provided prior to that date. If the CEO office advises that a compliance review cannot be completed by the required date, the head of the installation or his designee may authorize the contracting officer to (i) make the award, (ii) immediately inform the CEO office and (iii) request a postaward review in accordance with § 18–12.808–3(d).

§ 18–12.808–3 CEO responsibility for preaward compliance actions.

(a) The Director, Contractor Equal Opportunity Division, NASA Headquarters, (Code DE) is responsible for making the determination of eligibility for award as soon as possible regarding all formal preaward clearances requested in accordance with § 18–12.808–2(c).

(b) When one or more of the first-tier subcontractors come under the compliance cognizance of another CEO office or compliance agency the CEO office of the installation awarding the contract shall request clearance from the cognizant CEO or compliance agency and shall incorporate the results in the report to the Headquarters CEO office, which the Headquarters will consider in making the final determination of eligibility for award. In addition, such results will be included in the final report to the contracting officer.

(c) The CEO office shall notify the contracting officer within 5 working days of receipt of the request for clearance if the review cannot be completed by the time requested. When the prospective contractor is found to be in noncompliance, the CEO office shall, as soon as possible, notify the contracting officer that the company is not eligible to receive an award of a contract.

(d) When awards are made without preaward clearance in accordance with § 18–12.808–2(d)(2), a review shall be performed by the CEO office as soon as possible thereafter, but in no case later than 30 days after the date of award of the contract.

§ 18–12.809 Filing complaints.

(a) Complaints alleging discrimination in violation of the Equal Opportunity clause may be submitted in writing by any employee of any contractor or applicant for employment with such contractor, or by the employee's or applicant's authorized representative.

(b) Complaints should be filed with any installation CEO office, with the Director, Headquarters CEO Division (Code DE), Washington, D.C. 20546, or with the Director, OFCC, 12th and Constitution Avenue NW., Washington, DC 20210. When the complaint is received at the CEO office of an installation it will be forwarded immediately to the Headquarters CEO Division, which will forward all complaints it receives to the OFCC within 10 days of receipt. The Director, OFCC may refer complaints to NASA for processing, or where he considers it necessary or appropriate to the achievement of the purposes of the Executive Order, he may assume jurisdiction over the matter.

(c) Complaints shall be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Director, OFCC, or by the NASA Contract Compliance Officer.

(d) Complaints shall be signed by the complainant or his authorized representative and shall contain:

(1) Name, address, and telephone number of the complainant;

(2) Name and address of the contractor or subcontractor committing the alleged discriminatory acts;

(3) A description of the acts considered to be discriminatory; and

(4) Such other pertinent information as will assist in the investigation and resolution of the complaint.

(e) Where a complaint contains incomplete information, the CEO office which receives the complaint promptly shall request the needed information from the complainant. In the event such information is not furnished to the CEO office of the receiving installation within 15 days of the date of such request, the complaint shall be documented to this effect and forwarded to the Headquarters CEO Division. At the same time, the complainant shall be notified that his complaint has been directed to NASA Headquarters (Code DE) and that the necessary information should be forwarded to that office. In the event such information is not furnished to NASA

within 60 days of the original request, the case may be closed.

(f) Complaints filed with the procurement office or another office of an installation shall be forwarded immediately to the installation CEO office which will process the complaint in accordance with paragraph (b) of this section.

§ 18–12.810 Processing complaints.

(a) *Investigation.* Upon receipt of a complaint from OFCC for investigation, the Director, Headquarters CEO Division shall assign the complaint for investigation to the CEO office of the appropriate installation. The CEO office concerned shall be responsible for conducting the necessary complaint investigation, establishing a complete case record, developing findings, making recommendations, and submitting the information to the Director, Headquarters CEO Division for his determination regarding the disposition of the case.

(b) *Reports.* The Contract Compliance Agency shall be responsible for advising the complainant and the contractor involved of the disposition of the case. Reports of all complaint investigations and copies of closeout letters to complainants shall be forwarded to the Director, OFCC, within 60 days from the date the case was received from the OFCC. The Contract Compliance Agency shall advise OFCC of any cases requiring more than 60 days for processing.

§ 18–12.811 Resolution of complaints and violations.

(a) If a complaint investigation made in accordance with the provisions of § 18–12.810 shows no violation of the Equal Opportunity clause, the Director, Headquarters CEO Division shall so inform the Director, OFCC. The Director, OFCC, may review the findings and request further investigation by NASA or undertake such investigation as he deems appropriate.

(b) If any complaint investigation or compliance review indicates a violation of the clause, the matter shall be resolved by informal means whenever possible.

(c) Where any complaint investigation or compliance review indicates a violation of the Equal Opportunity clause and the matter has not been resolved by informal means, the Director, OFCC, or the NASA Contract Compliance Officer, with the approval of the Director, OFCC, shall afford the contractor an opportunity for a hearing. If the final decision is that a violation of the clause has taken place, the Director, OFCC, or the NASA Contract Compliance Officer, with the approval of the Director, OFCC, may cause the cancellation, termination, or suspension of any contract or subcontract, cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the Order.

§ 18–12.812 Reports and other required information.

(a) Title 41, section 60–1.2 of the CFR prescribes the annual filing of required forms by prime and subcontractors.

(b) If the bidder or prospective prime contractor has not stated in his bid or offer that he has complied with this requirement, he should state, prior to award of the contract, whether he has participated in any previous contract or subcontract subject to the Equal Opportunity clause; and, if so, whether he has filed with the Joint Reporting Committee, the Director, OFCC, an agency, or the former President's Committee on Equal Employment Opportunity all reports due under the applicable filing requirements.

(c) In any case in which the bidder, prospective prime contractor or proposed subcontractor who participated in a previous contract or subcontract subject to Executive Orders 10925, 11114, or 11246 has not filed a report due under the applicable filing requirements, the contract or subcontract shall not be awarded unless such contractor or subcontractor submits a report covering the delinquent period or such other period specified by the Director, OFCC, or the NASA Contract Compliance Officer and notifies the contracting officer of such submission.

(d) A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information, including copies of affirmative action programs, as the NASA Contract Compliance Officer or the Director, OFCC, requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to the award or after the award, or both, to furnish such information, including copies of affirmative action programs, as the NASA Contract Compliance Officer or the Director, OFCC, requests.

(e) Failure to file timely, complete, and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the Equal Opportunity clause and is the basis for the imposition by the NASA Contract Compliance Officer, or by the Director, OFCC of any sanctions authorized by these regulations or for cancellation on termination of the subcontract by an applicant, prime contractor or subcontractor. Any such failure shall be reported in writing to the Director, OFCC, by the NASA Contract Compliance Officer as soon as practicable after it occurs.

(f) Reports filed and information furnished pursuant to this subpart 8 shall be used only in connection with the administration of the Order, the Civil Rights Act of 1964, or in furtherance of the purpose of the Order and Act and, to the extent consistent with this purpose, shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4) when requested by the offeror, contractor, or subcontractor.

§ 18–12.813 Enforcement procedures.

§ 18–12.813–1 Informal enforcement procedures.

When a complaint investigation or compliance review indicates the existence of an apparent violation of the Equal Opportunity clause in § 18–12.804 or apparent noncompliance with the contractor's affirmative action program established in accordance with § 18–12.807, the matter should be resolved to the greatest extent possible by informal means, including conference, conciliation, mediation, and persuasion. Such informal means may include informal hearings when the Director, OFCC, or the NASA Contract Compliance Officer (CCO) with the approval of the Director, OFCC, decides that such informal hearings would be helpful in determining the status of the contractor's or subcontractor's compliance with the terms of the Equal Opportunity clause or his affirmative action program. The informal hearings shall be conducted by a hearing officer appointed by the Director, OFCC, or the CCO. The contractor or subcontractor involved shall be advised in writing of the time and place of the hearing, and other relevant information. Parties to informal hearings may be represented by counsel and shall have a fair opportunity to present any relevant material. Formal rules of evidence shall not apply to such proceedings.

§ 18–12.813–2 Formal enforcement procedures.

(a) When the informal enforcement procedures described in § 18–12.813–1 have not resolved the matter, the CCO shall issue a notice to the contractor informing him that he will have 30 days to develop an acceptable Affirmative Action Program (AAP), or to correct deficiencies in his program, or otherwise demonstrate why enforcement proceedings under section 209(b) of Executive Order 11246 should not be instituted. The contractor should be informed that such enforcement proceedings could result in cancellation or termination of his contract, and other proceedings which may ultimately result in his being declared ineligible for future Government contracts. During the 30-day period, every effort shall be made by the NASA Contract Compliance Officer (CCO) through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of noncompliance.

(b) If the contractor fails to show acceptable reasons for his failure to develop an AAP, or fails to develop or effectively implement an acceptable AAP, or otherwise fails to correct apparent violations of the Equal Opportunity clause within the 30-day period provided for in paragraph (a) of this section, the NASA CCO shall notify the head of the installation who shall notify the CEO and the contracting officer, as appropriate.

(c) Upon the approval of the Director, OFCC, and the NASA CCO, the DCCO shall notify the contractor that he has 10 calendar days in which to request a hearing on the question of whether existing Government contracts should be canceled or terminated and whether the contractor should be declared ineligible for future Government contracts. The contractor shall be informed that the hearings are to be held in accordance with section 208(b) of Executive Order 11246. The contractor shall also be in-

formed that his failure to request a hearing within 10 calendar days will result in his current Government contracts being canceled or terminated for default and his being declared ineligible for future Government contracts.

(d) If a request for a hearing has not been received after 10 calendar days from the date of the notice given by the Contract Compliance Officer (CCO) pursuant to (c) above, the Contract Compliance Officer (CCO) shall request approval from the Director, OFCC, to declare the contractor ineligible for future contracts, and cancel or terminate for default existing contracts.

(e) If the contractor requests a hearing in response to the notice sent pursuant to paragraph (c) of this section, the Director, OFCC, or the DCCO with the approval of the Director, OFCC, may convene formal hearings. Reasonable notice of a hearing shall be sent by certified mail, return receipt requested, to the last known address of the prime contractor or subcontractor concerned. Such notice shall contain the time and place of the hearing, a statement of the provisions of the order and regulations pursuant to which the hearing is to be held, and a concise statement of the matters on which the action furnishing the basis of the hearing has been taken or is proposed to be taken. A copy of the notice shall be sent to OFCC. Hearings shall be held before a hearing officer designated by the Director, OFCC, or the CCO. Each party shall have the right to counsel, a fair opportunity to present evidence and argument, and to cross-examine. Wherever a formal hearing is based in whole or in part on matters subject to the collective bargaining agreement and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party. Any other person or organization shall be permitted to participate upon a showing that such person or organization has an interest in the proceedings and may contribute materially to the proper disposition thereof. The hearing officer shall make his proposed findings and conclusions upon the basis of the record before him.

(f) When the hearing is concluded by NASA, the hearing officer will make his report and recommendation to the CCO. The decision of the CCO shall be final upon the approval of the Director, OFCC. When the hearing is conducted by a hearing officer appointed by the Director, OFCC, the hearing officer will make recommendations to the Director, OFCC, who will make the final decision. Parties will be furnished with copies of the hearing officer's recommendations and will be given an opportunity to submit their views.

§ 18–12.814 Sanctions and penalties.

(a) With the prior approval of the Director, OFCC, the following sanctions and penalties may be exercised against contractors found to be in violation of the Executive order, the regulation of the Secretary of Labor, or the clause in § 18–12.804.

(1) Publication of the names of such contractors or their unions;

(2) Cancellation, termination, or suspension of the contractors' contracts or portions thereof; and

(3) Debarments from future Government contracts, or extensions or modifications of existing contracts until such contractors have established and carried out personnel and employment policies in compliance with the Executive order, the regulation of the Secretary of Labor, and the compliance program of the Contract Compliance Officer.

(b) The Director, OFCC, may refer any matter arising under the Executive order to the Department of Justice or to to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

(c) The above sanctions and penalties may be exercised by the Director, OFCC, or the NASA Contract Compliance Officer against any prime contractor, subcontractor, or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Executive Order or any other Federal, State, or local laws requiring equal employment opportunity.

(d) Those declared ineligible under paragraph (a) or (c) of this section may request reinstatement in a letter directed to the Director, OFCC. In connection with the reinstatement proceedings, the prime contractor or subcontractor shall be required to show that it has established and will carry out employment policies and practices in compliance with the Equal Opportunity clause.

§ 18–12.850 Coordination with procurement offices.

The installation CEO office will insure that the procurement office is apprised in a timely manner of all action to be taken which may affect procurement operations. Such actions include delays in completing preaward compliance reviews, receipt of complaints, the scheduling and conduct of hearings, and the proposed imposition of sanctions or penalties. In addition, in matters involving sanctions or penalties, the Director of Procurement, NASA Headquarters, shall also be notified in a timely manner prior to the imposition of a sanction or penalty.

§ 18–12.851 Delegation between NASA installations.

When a prime or subcontract is to be performed at a NASA installation other than the installation which awarded the prime contract, the EEO compliance function shall be delegated to the NASA installation at which the work is to be performed. This will permit the contract relations specialist to provide early and relevant monitoring of the contract.

PART 18–13—GOVERNMENT PROPERTY

1. Section 18–13.301 is revised to read as follows:

§ 18–13.301 Providing facilities.

(a) It is the policy of the National Aeronautics and Space Administration that contractors will furnish all facilities (as defined in § 18–13.101–8) and plant equipment (as defined in B.102–10) required for the performance of Government contracts. Government-owned facilities and plant equipment, however, may be provided (as defined in § 18–13.101–3) to contractors under the conditions set forth below, but under no circumstances will facilities be provided solely for non-Government use

(1) For use in a Government-owned contractor-operated plant operated on a fee basis;

(2) For use by a local technical or base support contractor performing in a support role to a NASA installation;

(3) For use by an educational or nonprofit institution;

(4) For retention in a standby reserve posture resulting from an approved program in accordance with NASA Management Instruction 5400.2, "Retention of Inactive Government-Owned Industrial Capacity"; or

(5) When—

(i) The head of the installation in the case of new facilities, or the head of the installation or his designee in the case of existing Government-owned facilities, determines in writing that: (*a*) The NASA contract cannot be fulfilled by any other practical means (see § 18–13.301 (d)), or (*b*) it is otherwise in the public interest; and

(ii) The contractor, represented by an executive corporate official, or his equivalent in noncorporate entities, either expresses in writing his unwillingness or financial inability to acquire the necessary facilities with his resources, or explains in writing that time will not permit him to make the necessary arrangements to obtain timely delivery of such facilities to meet NASA requirements even though he is willing and financially able to acquire the facilities. In this latter case, existing Government-owned facilities (not new purchases) may be furnished until the contractor purchased facilities are delivered and installed.

(b) In the event a written determination is made by the head of the installation to provide new facilities pursuant to (a) (5) (i) of this paragraph, a copy of the determination together with a brief statement by the contracting officer of the circumstances justifying the provision of such facilities shall be furnished to the Office of Facilities, NASA Headquarters (Code BX). A copy shall also accompany the request for facilities project approval pursuant to § 18–13.301(h).

(c) Competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into plants of contractors unless the contracting officer determines that adequate price

competition cannot be obtained otherwise. In such cases, contractors shall be required to identify the Government facilities necessary for the performance of the contract.

(d) New facilities shall not be provided by the Government where an economical, practical and appropriate alternative exists. Examples include:

(1) Procuring from sources not requiring Government-owned facilities;

(2) Requiring the contractor to make full utilization of subcontractors possessing adequate and available capacity;

(3) Having the contractor rent facilities from commercial sources; and

(4) Using existing Government-owned facilities.

(e) Items having an acquisition cost of less than $1,000 shall not be provided under the terms of any contract except that, such items may be provided under contracts with:

(1) A contractor operating a Government-owned plant on a fee basis;

(2) A local technical or base support contractor performing in a support role to an NASA installation; and

(3) An educational institution or a not-for-profit organization when purchases are consistent with §§ 18–15.303–4 and 18–15.309–13.

(f) Prior to acquiring new facilities listed in § 18–13.312 which have an item acquisition cost of $1,000 or more, DOD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Procurement Office, NASA Headquarters (Code KDP–1) for screening in accordance with Subpart 50 of this part.

(g) The proposed acquisition of automatic data processing equipment (as defined in § 18–1.235) shall be:

(1) Submitted on DD Form 1419 through the contracting officer to the installation ADPE staff, for screening availability; and

(2) Approved in accordance with the provisions of NASA Handbook 2410.1A, "Management Procedures for Automatic Data Processing Equipment."

(h) When it has been determined by the contracting officer (in conjunction with the installation property officer) that Government property (as defined by § 18–13.101–2) will be provided to a local technical or base support contractor performing in a support role to an NASA installation, the "Government Property" clause shall be modified by insertion of a clause worded substantially as follows:

GOVERNMENT PROVIDED PROPERTY (MARCH 1972)

(a) In performance of work under this contract, certain Government property specifically identified in the Schedule of this contract by property classes, groups, or categories shall be made available to the Contractor on a no-charge-for-use basis. Such property shall be utilized in the performance of this contract at the installation administering this contract or at such other installation or place as may be specified elsewhere in this contract. The clause does not apply to Government furnished property or Contractor acquired Government property which, the Contracting Officer determines is subject to the controls set forth in Appendix B, NASA Procurement Regulation.

(b) The official accountable record keeping, and financial control and reporting of the facilities subject to this clause shall be retained by the Government. The Contractor shall, however, maintain internal property control records in such condition that at any stage of completion of work under this contract, the status of the property including location, utilization, consumption rate, and security may be readily ascertained. The Contractor shall also adhere to all other procedures prescribed by the installation property officer which pertain to the recording and reporting of property and to other aspects of property administration. The property records referred to above shall be made available to the installation property officer upon request.

(c) Government property made available under this clause shall in every respect be subject to the provisions of the clause of this contract entitled "Government Property" except as provided in (b) above, and as may otherwise be provided in this contract with respect to (i) the contractor's responsibilities for repair and maintenance of Government property, or (ii) his liability for any loss or damage of such property which is attributable to his failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

2. Section 18–13.302 is revised to read as follows:

§ 18–13.302 Securing approval for facilities contracts and facilities projects.

(a) When Government-owned facilities are to be provided to a contractor, an explanation setting forth the necessity or the Government's obligation and the estimated cost of the facilities authorized shall be included in the file of the related procurement contract. When the facilities contract covering facilities within the scope of the determination made in accordance with § 18–13.301(a)(5) is submitted to the Director of Procurement, NASA Headquarters for approval, a copy of the determination shall be included in the facilities contract file. When additional facilities are to be provided which exceed the scope authorized by the original determination, a new determination shall be made.

(b) If a facilities project involves construction work, project approval and resource authority shall be obtained prior to the initiation of procurement action. The applicable approval document shall be placed in the supporting contract file.

3. Section 18–13.801 is revised to read as follows:

§ 18–13.801 Appointment of property administrators.

(a) The selection, appointment and termination of appointment of property administrators shall be made in writing by the Procurement Officer or his designee. In selecting qualified property administrators the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

(b) In considering experience, training and education, the following shall be evaluated:

(1) Experience in accounting, material control, inventory control and allied functions;

(2) Formal education or specialization in such areas as evaluating, monitoring, administering or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(3) Knowledge of the provisions of this and other applicable regulations.

4. Section 18–13.803 is revised to read as follows:

§ 18–13.803 Records of Government property.

(a) Records of Government property established and maintained by the contractor pursuant to the terms of the contract shall be designated as the official contract property records except under the circumstances set forth in paragraph (b) of this paragraph. Contractors shall not be required to submit duplicate official records to NASA installations, nor shall duplicate official records be maintained by NASA installations.

(b) Official property records shall be maintained by NASA installations (1) where property is provided to a local technical or base support contractor performing in a functional role to a NASA installation; and (2) where Government property is furnished to a contractor for repair or servicing and return to the shipping organization. In the case of this (b)(1), the "Government Property" clause shall be modified by the clause set forth in § 18–13.301(h). In the case of this (b)(2), the property shall be accounted for as a suspense item within the installation account from which shipped and the "Government Property" clause shall be modified by insertion of the following clause:

PROPERTY RECORDS (MARCH 1972)

The Government shall maintain the official contract records in connection with Government property furnished to the Contractor for repair or servicing, and return to the shipping organization. The "Government Property" clause is hereby modified by deleting so much thereof as requires that the Contractor maintain such records.

PART 18–15—CONTRACT COST PRINCIPLES AND PROCEDURES

1. Section 18–15.102 is revised to read as follows:

§ 18–15.102 Negotiated supply, service, experimental, developmental, and research contracts, and contract changes with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated on the basis of cost with organizations other than educational institutions (see § 18–15.103) and State and local governments (see § 18–15.108). It does not include facilities contracts (see § 18–15.105) and construction contracts (see § 18–15.104). The cost principles and procedures set forth in Subpart 18–15.2 shall be used in the pricing of negotiated supply, service, experimental, developmental, and research contracts and contract modifications

with commercial organizations whenever cost analysis is to be performed pursuant to § 18–3.807–2. In addition, the cost principles and procedures set forth in Subpart 18–15.2 shall be incorporated by reference in such contracts as the basis—

(1) For determination of reimbursable costs under cost-reimbursement type contracts (§ 18–3.405) including cost-reimbursement type subcontracts thereunder, and the cost-reimbursement portion of time and materials contracts (§ 18–3.406–1) except in such contracts where material is priced on a basis other than at cost in accordance with § 18–3.406–1(d);

(2) For the negotiation of overhead rates (Subpart 18–3.7);

(3) For claiming, negotiating, or determining costs under terminated fixed-price and cost-reimbursement type contracts (§§ 18–8.204 and 18–8.214);

(4) For the price revision of fixed-price incentive contracts (§ 18–3.404–4);

(5) For price redetermination of prospective and retroactive price redetermination contracts (§§ 18–3.404–5 and 18–3.404–7; and

(6) For pricing changes and other contract modifications (§§ 18–7.103–54 and 18–7.303–63).

2. Section 18–15.103 is revised to read as follows:

§ 18–15.103 Contracts with educational institutions.

This category includes all contracts for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Subpart 18–15.3 shall be incorporated by reference in cost-reimbursement research contracts with educational institutions as the basis for:

(a) The determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) The negotiation of overhead rates (Subpart 18–3.7);

(c) The determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs (Subpart 18–8.4) and for settlement of such contracts by determination (§ 18–8.210–7).

In addition, Subpart 18–15.3 is to be used in determining the allowable costs of research and development performed by educational institutions under grants as a guide in the evaluation of costs in connection with the negotiation of fixed-price type contracts and termination settlements.

3. Section 18–15.104 is revised to read as follows:

§ 18–15.104 Construction contracts.

This category includes all contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property. The cost principles and procedures set forth in Subpart 18–15.4 shall be used in the pricing of negotiated construction contracts and contract modifications with concerns other than educational institutions whenever cost analysis is to be performed pursuant to § 18–3.807–2. In addition, the cost principles and procedures set forth in Subpart 18–15.4 shall be incorporated by reference in cost-reimbursement and fixed-price type construction contracts as the basis—

(a) For determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder (§18–3.405);

(b) For the negotiation of overhead rates (Subpart 18–3.7);

(c) For claiming, negotiating, or determining costs under terminated fixed-price and cost-reimbursement type contracts (§§ 18–8.204 and 18–8.214);

(d) For the price revision of fixed-price incentive contracts (§ 18–3.404–4); and

(e) For pricing changes and other contract modifications (§§ 18–7.103–54 and 18–7.303–63).

4. Section 18–15.204 is revised to read as follows:

§ 18–15.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent that they are reasonable (see § 18–15.201–3), allocable (see § 18–15.201–4), and determined to be allowable in view of the other factors set forth in §§ 18–15.201–2 and 18–15.205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(b) Costs incurred as reimbursements to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm fixed-price or fixed-price escalation subcontract are allowable to the extent that allowance is consistent with this Part 18–15 which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this Subpart 18–15.2 were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if Subpart 18–15.4 were incorporated in the subcontract. Similarly, costs incurred as payments under firm fixed-price or fixed-price escalation subcontracts or modifications thereto, when cost analysis was performed pursuant to § 18–3.807–10(b), shall be allowable only to the extent that the price was negotiated in accordance with the principles in § 18–15.106.

(c) Selected items of cost are treated in § 18–15.205. However, § 18–15.205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in § 18–15.205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this subpart and, where appropriate, the treatment of similar or related selected items.

4. Section 18–15.204 is revised to read as follows:

§ 18–15.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent that they are reasonable (see § 18–15.201–3), allocable (see § 18–15.201–4), and determined to be allowable in view of the other factors set forth in §§ 18–15.201–2 and 18–15.205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(b) Costs incurred as reimbursements to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier about the first firm fixed-price or fixed-price escalation subcontract are allowable to the extent that allowance is consistent with this Part 18–15 which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this Subpart 18–15.2 were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if Subpart 18–15.4 were incorporated in the subcontract. Similarly, costs incurred as payments under firm fixed-price of fixed-price escalation subcontracts or modifications thereto, when cost analysis was performed pursuant to § 18–3.807–10(b), the price was negotiated in accordance with the principles in § 18–15.106.

(c) Selected items of cost are treated in § 18–15.205. However, § 18–15.205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in § 18–15.205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this subpart and, where appropriate, the treatment of similar or related selected items.

§ 18–15.205–6 [Amended]

5. In § 18–15.205–6, add the following paragraph (j):

* * * * *

(j) Costs which are unallowable under other paragraphs of this Subpart 218–15. shall not be allowable under § 18–15.205–6 solely on the basis that they constitute personal compensation.

6. Section 18–15.205–26 is revised to read as follows:

§ 18–15.205–26 Patent costs.

(a) Costs of (1) preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such in-

vention disclosures, (2) preparing documents and any other patent costs, in connection with the filing and prosecution of a U.S. patent application where title or royalty free license is required by Government contract or section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) to be conveyed to the Government; and (3) general counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable. (But see § 18–15.205–31.)

(b) Costs of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make invention disclosures, if not required by the contract or other agreement, are unallowable. Costs in connection with (1) filing and prosecuting any foreign patent application, or (2) any U.S. patent application with respect to which the contract or other agreement, does not require conveying title or a royalty free license to the Government, are unallowable. (Also see § 18–15.205–36.)

§ 18–15.205–44 [Amended]

7. In § 18–15.205–44, add the following paragraph (g):

(g) Training and education costs in excess of those otherwise allowable under paragraphs (b) and (c) of this section may be allowed to the extent set forth in an advance agreement negotiated pursuant to § 18–15.107 (the limitation of § 18–15.107(b) notwithstanding). To be considered for an advance agreement, the contractor must demonstrate that such costs are consistently incurred pursuant to an established engineering or scientific training and education program, and that the course or degree pursued is relative to the field in which a bona fide employee is now working or may reasonably be expected to work.

PART 18–16—PROCUREMENT FORMS

1. Section 18–16.001 (a) and (b) is revised to read as follows:

§ 18–16.001 Index of procurement forms for NASA use.

Listed below in numerical sequence are NASA forms, U.S. standard forms, DOD forms, and certain miscellaneous forms that are authorized for use by this chapter. The current edition of each form is shown in parentheses under the column headed "Date." References to form numbers in this chapter are to the current editions of the forms identified in the list below, unless otherwise specifically indicated.

(a) *NASA forms.*

Number	Date	Title
246	(11–70)	General Provisions for Short Form Fixed-Price Contract With Nonprofit Institutions.
247	(5–71)	General Provisions for Fixed-Price Research and Development Contract.
250	(11–70)	Additional General Provisions to U.S. Standard Form 32 (6–64 Ed.).
362	(11–58)	Agreement for Use of NASA Unitary Plan Wind Tunnel Facilities.
404	(6–68)	Procurement Request.
417	(11–70)	General Provisions for Cost-Reimbursement Research and Development Contract.
418	(11–70)	General Provisions for Cost-Plus-a-Fixed-Fee Supply Contract.
419	(11–70)	General Provisions for Cost-Reimbursement Research and Development Contracts with Educational or nonprofit Institutions.
446	(8–60)	Request for Contractor Clearance.
456	(11–68)	Notice of Contract Costs Suspended and/or Disapproved.
456–1	(11–68)	Notice of Contract Costs Suspended and/or Disapproved—Continuation Sheet.
507	(6–63)	Individual Procurement Action Report.
523	(7–69)	NASA—Defense Purchase Request.
524	(7–65)	NASA Small Business Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns.
533	(2–67)	Quarterly Contractor Financial Management Report.
533a	(2–67)	Monthly Contractor Financial Management Report.
533b	(2–67)	Contractor Financial Management Report—Contracts Under $500,000.
533c	(2–67)	Contractor Financial Management Report—Support Services Contracts.
543	(12–70)	Justification for Negotiation.
550	(1–63)	Negotiated Utility Service Contract.
550S	(1–63)	Negotiated Utility Service Contract (Short Form).
550A	(5–71)	General Provisions for Negotiated Utility Service Contract.
550SA	(5–71)	General Provisions for Negotiated Utility Service Contract (Short Form).
550A–1	(1–63)	Electric Service Specifications.
550A–2	(1–63)	Gas Service Specifications.
550A–3	(1–63)	Water Service Specifications.
550A–4	(1–63)	Steam Service Specifications.
550A–5	(1–63)	Sewage Service Specifications.
550B	(1–63)	Signature Page.
551	(4–62)	Cover Page for Letter Contracts.
551–1	(4–62)	Letter of Transmittal for Letter Contracts.
551–2	(9–62)	Schedule Format for Letter Contracts.
551–3	(1963)	General Provisions for Letter Contracts.
558	(2–64)	Materials Requirements Report.
604	(6–71)	Additional General Provisions to U.S. Standard Form 23A (10–69 Ed.).
667	(11–66)	Report on NASA Subcontracts
746	(1–71)	General Provisions (Cost-Reimbursement Facilities Acquisition Contract).
747	(1–71)	General Provisions (Facilities Use Contract).
748	(1–71)	General Provisions (Cost-Reimbursement Consolidated Facilities Contract).
778	(4–68)	Contractor's Release.
779	(4–68)	Assignee's Release.
780	(1–63)	Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
781	(1–63)	Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.
811	(12–62)	Determination for Classification of Property as Scrap or Salvage.
812	(12–62)	Determination and Authorization to Abandon or Destroy Surplus Property.
1017	(6–68)	Government-Owned/Contractor-Held Space Hardware Report.
1018	(6–68)	Analysis of Government-Owned/Contractor-Held Property Other Than Space Hardware.
1057	(10–66)	Forecast of Propellant Requirements.
1129	(5–69)	Incentive Contracts Currently Under Administration.
1132	(5–69)	Incentive Contracts Evaluation of Incentive Effectiveness (Final Report).
1162	(6–66	New Technology (May 1969).
1168	(10–64)	Procurement Plan Contents Checklist.
1206	(4–65)	Assurance of Compliance with the National Aeronautics and Space Administration Regulation Under Title VI of the Civil Rights Act of 1964.
1333	(9–66)	Patent License Agreement.
1334	(2–71)	General Provisions (Time and Material and Labor Hour Contracts).
1350	(5–67)	NASA Contracting Officer's Certificate of Appointment.
1379	(9–69)	Order for Supplies or Service.
1379 (Reverse).	(9–68)	Terms and Conditions of Purchase Order.
1379A	(9–68)	Order for Supplies or Services (Continuation Sheet).
1379B	(9–68)	Additional General Provisions, Modification, and Acceptance.
1412	(9–69)	Termination Authority.
1413	(9–69)	Termination Docket Checklist.
1430	(5–70)	Letter of Contract Administration Delegation, General.
1430A	(5–70)	Letter of Contract Administration Delegation, Special Instructions.
1431	(5–70)	Letter of Acceptance o Contract Administration Delegation.
1432	(5–70)	Letter of Contract Administration Delegation—Termination.
1433	(5–70)	Letter of Audit Delegation.
1434	(5–70)	Letter of Request for Pricing-Audit-Technical Evaluation Services.
1477	(4–71)	Contractor and Subcontractor Certified Cost or Pricing Data (Oct. 1969).

(b) *U.S. standard forms.*

Number	Date	Title
18	(7–66)	Request for Quotations.
19	(10–69)	Invitation, Bid, and Award (Construction, Alteration, or Repair).
19–A	(4–65)	Labor Standards Provisions Applicable to Contracts in Excess of $2,000.
19–B	(10–69)	Representations and Certifications (Construction Contracts).
20	(1–61)	Invitation for Bids (Construction Contract).
21	(12–65)	Bid Form (Construction Contract).
22	(10–69)	Instructions to Bidders (Construction Contract).
23	(1–61)	Construction Contract.
23–A	(10–69)	General Provisions (Construction Contract).
24	(6–64)	Bid Bond.
25	(6–67)	Performance Bond.
25–A	(7–66)	Payment Bond.
25–B	(6–64)	Continuation Sheet (for Standard Forms 24, 25, and 25–A).
26	(7–66)	Award/Contract.
28	(6–69)	Affidavit of Individual Surety.
30	(7–69)	Amendment of Solicitation/Modification of Contract.
32	(11–69)	General Provisions (Supply Contract).
33	(11–69)	Solicitation, Offer, and Award.
33–A	(3–69)	Solicitation Instructions and Conditions.
34	(6–64)	Annual Bid Bond.
35	(6–64)	Annual Performance Bond.
36	(7–66)	Continuation Sheet.
38	(10–64)	Notice of Nondiscrimination in Employment.
44	(6–61)	Purchase Order—Invoice—Voucher.
97	(9–61)	The U.S. Government Certificate of Release of a Motor Vehicle.
97–A	(9–61)	Agency Record Copy of the U.S. Government Certificate of Release of a Motor Vehicle.
98	(6–69)	Notice of Intention To Make a Service Contract and Response to Notice.
99	(5–65)	Notice of Award of Contract.
100	(1–67)	Employer Information Report EEO–1.

Number	Date	Title
119	(4-63)	Contractor's Statement of Contingent or Other Fees.
120	(4-57)	Report of Excess Personal Property.
125	(12-59)	Report of Strategic and Critical Materials.
129	(1-66)	Bidder's Mailing List Application.
147	(6-64)	Order for Supplies or Services.
148	(6-64)	Continuation Sheet for Standard Form 147.
251	(6-61)	Architect-Engineer Questionnaire.
1034	(Undated)	Public Voucher for Purchases and Services Other Than Personal.
1034a	(Undated)	Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.
1035	(Undated)	Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.
1035a	(Undated)	Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet—Memorandum.
1080	(Undated)	Voucher for Transfers Between Appropriations and/or Funds.
1093	(Undated)	Schedule of Withholdings Under the Davis-Bacon Act.
1094	(Undated)	U.S. Tax Exemption Certificate.
1165	(3-52)	Receipt for Cash—Subvoucher

* * * * *

2. Section 18-16.201-2 is revised to read as follows:

§ 18-16.201-2 Proposal and acceptance.

NASA Form 1379 will be used normally in negotiated supply contracts for standard or commercial type items.

3. Section 18-16.702-4 is revised to read as follows:

§ 18-16.702-4 Settlement Proposal—Short Form (DD Form 331).

DD Form 831 is authorized for use by contractors in submitting claims resulting from the termination of fixed-price contracts when the total claim is less than $10,000.

4. Section 18-16.752 is revised to read as follows:

§ 18-16.752 Termination Authority (NASA Form 1412).

NASA Form 1412 is prescribed for use by cognizant NASA installations when initiating action to terminate a contract for either convenience of the Government or for default of the contractor. The termination authority shall normally be originated by the project manager or other NASA official responsibile for the decision to terminate and shall be submitted to the NASA installation procurement office for use in recording subsequent decisions regarding the type of termination and assignment of the responsibility for final settlement.

5. Section 18-16.803-4 is revised to read as follows:

§ 18-16.803-4 Employer Information Report EEO-1 (Standard Form 100).

Standard Form 100 shall be used in accordance with the provisions of § 18-12.812.

6. Section 18-16.805 is revised to read as follows:

§ 18-16.805 Bond forms.

The bond forms listed below are available for use in accordance with the provisions of Part 18-10 of this chapter.

(a) Bid Bond (Standard Form 24).

(b) Annual Bid Bond (Standard Form 34).

(c) Performance Bond (Standard Form 25).

(d) Payment Bond (Standard Form 25-A).

(e) Continuation Sheet (Standard Form 25-B) (For Standard Forms 24, 25, 25-A).

(f) Affidavit of Individual Surety (Standard Form 28).

(g) Annual Performance Bond (Standard Form 35).

(h) Performance Bond Form for Subcontracts (see § 18-10.103-(a)).

Performance Bond _____ Dated Bond Executed _____
Principal _____
Surety _____
Obligee _____
Penal Sum of Bond (express in words and figures) _____
Contract Identification and Date _____

Know all men by these presents, That we, the Principal and Surety above named, are held and firmly bound unto the Obligee above named in the amount of the penal sum stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Obligee and Principal have entered into a certain contract identified above, which contract is by reference made a part hereof and is hereinafter referred to as the contract.

Now, therefore, the condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract, then this obligation shall be null and void; otherwise to remain in full force and virtue.

1. The Contract includes all duly authorized modifications and extensions thereof, with or without notice to the Surety and extends to any guaranty required by the terms thereof.

2. The rights of the Obligee hereunder may be assigned to the United States of America or a Department or Agency thereof, and without in any manner invalidating or qualifying this instrument. Notice of assignment shall be given the surety within a reasonable time, but a failure of notice shall not affect the validity of this bond or the assignment.

In witness whereof, the above-bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents being duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of:

Witness		*Individual Principal*	
1. _____	as to	_____	[SEAL]
2. _____	as to	_____	[SEAL]
3. _____	as to	_____	[SEAL]
4. _____	as to	_____	[SEAL]

Witness		*Individual Surety*	
1. _____	as to	_____	[SEAL]
2. _____	as to	_____	[SEAL]

Attest:		Attest:	
Corporate Principal _____		Corporate Surety _____	
Business Address _____		Business Address _____	
By _____		By _____	
Title _____	[AFFIX CORPORATE SEAL]	Title _____	[AFFIX CORPORATE SEAL]

(i) Payment Bond Form for Subcontracts (see § 18-10.103-3(a)).

Payment Bond _____ Date Bond Executed _____
Principal _____
Surety _____
Obligee _____
Penal Sum of Bond (express in words and figures) _____
Contract Identification and Date _____

Know all men by these presents, That we, the Principal and Surety above named, are held and firmly bound unto the Obligee above named, in the amount of the penal sum stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Obligee and the Principal entered into a certain contract identified above, which contract is by reference made a part hereof and is hereinafter referred to as the Contract; and

Whereas, performance of the Contract is related to work required under Government Prime Contract _____ the site of such work being in the County of _____ State of _____, being hereinafter referred to as the "place where the work is located."

Now, therefore, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material furnished

in the prosecution of the work provided for in the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect. A claimant shall have a direct right of action hereunder against the Principal and the Surety subject to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal who has furnished labor, material or both, in the prosecution of work provided for in the contract and who has not been paid in full therefor. Labor and material are construed to include, but are not limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed or materials were furnished by such claimant, or before the expiration of the period provided by the law of the place where the work is located for the giving of first notice of a lien of the category claimed by the claimant, whichever period be longer, may prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and may have execution thereon: *Provided, however,* That neither the Obligee nor the assignee of the Obligee shall be liable for the payment of any costs or expenses of any such suit, judgment or execution.

3. The Obligee may assign this instrument and any right it has hereunder to the United States of America or any department or agency thereof without in any way diminishing the obligations of the Principal and Surety hereunder.

4. No suit or action shall be commenced hereunder by any claimant,

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal and the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or from whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in envelopes addressed to the Principal and the Surety, at any place where an office is regularly maintained by the addressee for the transaction of business, or served in any manner in which legal process may be served in the place where the work is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract. If any period of limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a court of competent jurisdiction in and for the state or other political subdivision of the place where the work is located, or in the United States District Court for the district where the work is located, and not elsewhere.

5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

In witness whereof, the above-bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents being duly signed by its undersigned representative pursuant to authority of its governing body.

In Presence of:

Witness		*Individual Surety*	
1.	as to		[SEAL]
2.	as to		[SEAL]
3.	as to		[SEAL]
4.	as to		[SEAL]
Witness		*Individual Principal*	
1.	as to		[SEAL]
2.	as to		[SEAL]

Attest:
Corporate Principal _____
Business Address _____
By _____
Title _____ [AFFIX CORPORATE SEAL]

Attest:
Corporate Surety _____
Business Address _____
By _____
Title _____ [AFFIX CORPORATE SEAL]

7. Section 18–16.856 is revised to read as follows:

§ 18–16.856 Contractor financial management report (NASA Form 533 Series of Reports).

The NASA Form 533 series of reports is designed for contractors to use in submitting, at required intervals, their financial and manpower experience and projections. The basic policy, procedures and instructions for the preparation and submission of the reports are set forth in NASA Management Instruction 9501.-1A, "Contractor Financial Management Reporting Systems" and in the NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2A) and on the reverse side of the forms.

PART 18–17—EXTRAORDINARY CONTRACTUAL ADJUSTMENTS PROCEDURE

1. Section 18–17.108 is revised to read as follows:

§ 18–17.108 Contractual requirements.

Every contract entered into or amended or modified pursuant to this part shall contain:

(a) A citation of the Act and Executive order;

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding that the action will facilitate the national defense;

(d) The contract clause entitled "Covenant Against Contingent Fees" as set forth in § 18–1.503;

(e) The contract clause entitled "Examination of Records" as set forth in § 18–7.104–15.

(f) The contract clause entitled "Equal Opportunity" as set forth in § 18–12.804, whenever required under Subpart 18–128;

(g) The contract clause entitled "Assignment of Claims" as set forth in § 18–7.103–8;

(h) If otherwise applicable, the contract clauses entitled "Walsh-Healey Public Contracts Act," "Davis-Bacon Act," "Copeland ('Anti-Kickback') Act—Nonrebate of Wages," and "Contract Work Hours Standards Act—Overtime Compensation" as set forth respectively in §§ 18–12.605 and 18–12.403; and

(i) Any other clauses set forth in this chapter which are appropriate to the particular procurement.

PART 18–23—SUBCONTRACTING POLICIES AND PROCEDURES

1. Section 18–23.201–4 is added:

§ 18–23.201–4 Clause entitled "Equal opportunity preaward clearance of subcontracts."

The clause set forth in § 18–12.804(c) shall be inserted in all contracts containing any of the "Subcontracts" clauses prescribed by this § 18–23.201.

PART 18–26—CONTRACT MODIFICATION

1. Section 18–26.404 is revised to read as follows:

§ 18–26.404 Processing novation agreements and change of name agreements.

(a) Any NASA installation, upon being notified of a successor in interest to, or change in name of, one of its contractors, shall promptly communicate with the contractor in writing. Except in those instances where there is an existent contract between the contractor and any element of the DOD (see §§ 18–26.402(b), 18–26.403(c), and 18–26.451) the contractor shall be requested to furnish the pertinent documentation enumerated in § 18–26.402(b) or § 18–26.403(a) as required, to the NASA installation with which it has the largest amount of unliquidated obligations. This installation shall be the "designatd installation" for the purpose of processing and executing novation agreements and change of name agreements with the contractor. The installation shall immediately notify the Procurement Office, NASA Headquarters (Code KDP–3) of the request to execute a successor in interest or change in name

agreement. The notification shall include (1) the names of the firms involved, (2) the name of the installation which will execute the agreement, and (3) the type of agreement contemplated.

(b) To avoid duplication of effort on the part of NASA installations in preparing and executing agreements to recognize a change of name or successor in interest, only one supplemental agreement will be prepared to effect necessary changes for all contracts between NASA and the contractor involved. The designated installation shall take all necessary and appropriate action with respect to either recognizing or not recognizing the successor in interest, or recognizing a change of name, including without limitation the following:

(1) Drafting and executing a supplemental agreement to one of the contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name, and

(2) Instituting and monitoring procedures for security clearance.

A supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. Each supplemental agreement will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the installations having contracts subject to the supplemental agreement.

(c) Prior to execution, the agreement and supporting documents shall be reviewed for legal sufficiency by the legal office at the designated installation.

(d) After execution of the supplemental agreement, the designated installation shall:

(1) Forward three authenticated copies of the supplemental agreement to the Procurement Office, NASA Headquarters (Code KDP-3), and

(2) Advise each of the affected installations, by letter (see § 18-26.451), of the consummation of the supplemental agreement and request that an administrative change be issued for each affected contract. A copy of the supplemental agreement should be enclosed.

(e) For each such affected contract, the contracting officer shall prepare an administrative change acknowledging the change in name or successor in interest. The administrative change will receive the same distribution as the affected contract. It will indicate the nature of the transaction, the result attained, and will cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

2. Section 18-26.451 is revised to read as follows:

§ 18-26.451 Sample letter requesting issuance of administrative change.

The following sample letter format is appropriate to give notice of execution of a novation agreement and to request issuance of an administrative change in accordance with § 18-26.404(d)(2):

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
Greenbelt, Md.
MARCH 15, 1970.

Subject: Novation Agreement.
To: Procurement Officer, Langley Research Center.

1. Your attention is invited to the attached supplemental agreement wherein a transfer of the business of ABC Corporation to XYZ Corporation is recognized.

2. In accordance with NASA Procurement Regulation 26.404 contracting officer(s) presently responsible for affected contracts placed by your installation, which are listed in the supplemental agreement, should immediately issue an Administrative Change to each such contract to reflect the change.

JOHN J. JONES,
Procurement Officer,
Goddard Space Flight Center.

PART 18-50—ADMINISTRATIVE POLICIES AND PROCEDURES

1. Section 18-50.300 is revised to read as follows:

§ 18-50.300 Scope of subpart.

This subpart sets forth the administrative requirements and procedures for uniform numbering and distribution of NASA contracts (including letter contracts), purchase orders (including requests to other Government agencies), grants, basic agreements, basic ordering agreements, other documents evidencing in whole or in part an agreement between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasurer of the United States, and modifications or supplements thereto. It further provides for a uniform identification system for numbering IFB's and RFP's.

2. Sections 18-50.302-1, 18-50.302-2, 18-50.302-3, 18-50.302-4, 18-50.302-5, and 18-50.302-6 are revised to read as follows:

§ 18-50.302 Invitations for bids, requests for proposals, contracts, agreements, and modifications.

§ 18-50.302-1 Identification of invitations for bids and requests for proposals.

IFB's and RFP's shall be numbered in accordance with the individual field installation's system for identifying IFB's and RFP's except that in all cases the identifying number shall begin with the installation's numerical identification prefix as set forth in § 18-50.302-4.

§ 18-50.302-2 Contracts and agreements requiring numbering.

The following contracts and agreements shall be numbered in accordance with the uniform numbering system prescribed in §§ 18-50.302-3, 18-50.302-4, 18-50.302-5, and 18-50.302-7:

(1) All contracts, including letter contracts, for procurement or sale of supplies or services involving or likely to involve the payment or receipt of $2,500 or more ($2,000 in the case of construction work);

(2) All indefinite delivery type contracts involving more than one payment and estimated to involve payment or receipt of more than $2,500 during the fiscal year;

(3) All utilities contracts;

(4) All leases of real property and renewals thereof;

(5) All easements;

(6) All basic agreements;

(7) All basic ordering agreements; and

(8) All other written agreements involving payment or receipt of funds not covered by §§ 18-50.303 and 18-50.304.

§ 18-50.302-3 Assignment and control of numbers.

(a) The numbering of contracts, agreements, and modifications thereto shall be centrally controlled by each procurement office at NASA Headquarters, field installation or office for which a prefix identification symbol has been assigned.

(b) A complete identifying number shall consist of the following and will be assigned to NASA contracts and agreements designated in § 18-50.302-2:

(1) One of the prefix identification symbols set forth in § 18-50.302-4 followed by a hyphen; and

(2) A serial number (assigned in accordance with § 18-50.302-5) for the particular transaction.

§ 18-50.302-4 Assigned contract or agreement prefixes.

Approved prefixes for NASA contract or agreement numbers are as follows:

Headquarters	*Prefix*
Headquarters Administration Office:	
All contracts, except those with universities	NASW
University contracts	NSR
Procurement Office (Basic Agreements)	NASP
Space Nuclear Systems Offices:	
SNSO, Germantown	SNS
SNSO, Cleveland Extension	SNSC
SNSO, Nevada Extension	SNSN

Field Installations and Offices	*Prefix*
Langley Research Center	NAS1
Ames Research Center	NAS2
Lewis Research Center	NAS3
Flight Research Center	NAS4
Goddard Space Flight Center	NAS5
Wallops Station	NAS6
NASA Pacadena Office	NAS7
George C. Marshall Space Flight Center	NAS8
Manned Spacecraft Center	NAS9
John F. Kennedy Space Center	NAS10

§ 18-50.302-5 Serial numbers.

(a) Except for university contracts placed by the Headquarters Administration Office, contracts and agreements identified in § 18-50.302-2 shall be numbered serially by the organizational unit authorized to assign such numbers, commencing with the number "1," and continuing in succession without regard to fiscal year or type of contract, for example: NAS5-300; NAS5-301. If the

contract is a facilities contract, the letter "F" in parentheses, shall be added at the end of the serial number for identification purposes, for example: NAS5-301(F). When the series of numbers under a symbol exceeds five digits (99,999), a new series of numbers will be used beginning the series with number 1 and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," etc., as may be required, except that the letters "I" and "O" shall not be used.

(b) University contracts placed by the Headquarters Administration Office shall be assigned an eight-digit number, exclusive of the letter prefix, consisting of the following:

(1) A two-digit number representing the State in which the contractor is located, followed by a hyphen;

(2) A three-digit number representing the contractor, followed by a hyphen; and

(3) A three-digit number representing the document control number.

An example of a complete contract number is: NSR-14-002-012. (Note: Prior to July 1, 1964, university contracts which were placed by the Office of Grants and Research Contracts were numbered by using the prefix "NASr" followed by a numerical series representing the document control number. For example, NASr-136.)

§ 18-50.302-6 Modifications of contracts or agreements.

Modifications of definitive contracts or agreements shall (1) bear the same identification as the contract or agreement being modified, and (2) be numbered consecutively for each contract or agreement, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for Notices of Termination (see § 18-16.701), modifications shall be effected by the use of Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see §§ 18-16.103 and 18-16.815).

3. Section 18-50.302-7 is added:

§ 18-50.302-7 Letter contracts.

(a) *Superseding definitive contract.* The same number assigned to the letter contract according to §§ 18-50.302-4 and 18-50.302-5 shall also be assigned to the superseding definitive contract. No other contract number will be assigned to the superseding definitive contract.

(b) *Modifications.* (1) Additions or changes to letter contracts will be accomplished by modification to the letter contract. Modifications shall, (i) bear the same identification as the letter contract being modified, and (ii) be numbered consecutively for each letter contract, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action.

(2) Upon definitization of the letter contract, contract modification shall be accomplished by using the numbering system prescribed in § 18-50.302-6.

4. Section 18-50.303-1 is revised to read as follows:

§ 18-50.303 Purchase orders and requests.

§ 18-50.303-1 General.

Purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services will be assigned a complete identifying number consisting of:

(a) One of the letter prefixes set forth in § 18-50.303-2 followed by a hyphen; and

(b) A serial number, assigned in accordance with § 18-50.303-4.

PART 18-51—CONTRACT MANAGEMENT PROCEDURES

1. Sections 18-51.306 and 18-51.307 are revised to read as follows:

§18-51.306 Contract administration by DOD personnel on a NASA installation.

When it is contemplated that the presence of DOD personnel will be required on a NASA installation for a period exceeding 30 work days, either continuous or intermittent, for the purposes of performing contract administration functions, the NASA contracting officer of the NASA installation on which contract performance will take place shall obtain prior approval for the use of such personnel from the Head of his Installation and shall obtain the concurrence of the Director of Procurement, NASA Headquarters (Code KDP-3). Such approvals will normally be governed by the following criteria:

(a) The delegation of any functional area (i.e., Production, Property Administration, Quality Assurance, etc.) shall include all of the administrative responsibilities pertaining to that functional area that are listed in § 18-51.304(d), that the DOD contract administration office is capable of performing; and

(b) The functions so delegated are to be accomplished under the direction of the contract administration office to which the delegation will be made.

§ 18-51.307 Assignment of NASA personnel at contractor plants.

(a) NASA personnel normally shall not be assigned at or near a contractor's facility for the purpose of performing any contract administration functions listed in § 18-51.304(d). Prior to making such an assignment, a written request shall be forwarded to the cognizant Institutional Director for his approval and the concurrence of the Director of Procurement. The following supporting information shall be forwarded with the request to make the assignment:

(1) A statement of the special circumstances which necessitate the assignment;

(2) The contract administration services to be performed;

(3) A summary of any discussions held with the cognizant contract administration organization; and

(4) A staffing plan for a 3-year period or such shorter period as may be appropriate.

The provisions of this paragraph do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by § 18-51.303(c), unless they are performing any of the contract administration functions listed in § 18-51.304(d), or to personnel assigned to contractors' plants that are located on either NASA or other Government agency installations.

(b) NASA personnel assignments made at or near a contractor's facility for the purpose of performing any of the contract administration functions listed in § 18-51.304(d) shall be reviewed annually by the cognizant NASA installation. A justification for the proposed continuance of such assignments, or a negative report reflecting that no such assignments exists, shall be furnished to the Director of Procurement and the appropriate Institutional Director by October 1 of each year. The provisions of this paragraph do not apply when NASA personnel are assigned to contractor's facilities located on NASA or other Government agency installations.

(c) When a NASA resident office and a DOD contract administration office are performing contract administration functions on NASA contracts at the same contractor's facility, a written agreement between the two offices shall be entered into which will clearly delineate the interface of the two organizations with each other and with the contractor. The agreement should eliminate duplication in the performance of contract administration functions, and should minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned, and shall include no relationship of NASA nonprocurement resident personnel with their DOD and contractor counterparts when such personnel are, or intend to be, involved in any aspect of contract administration such as surveillance of the safety requirements of the contract, contractor use of NASA facilities, or contractor schedule performance.

Appendix B—Control of Government Property in Possession of Contractors

1. B.311 is revised to read as follows:

B.311 Financial control accounts and reports—(a) *Property accounts.* The contractor's property control system shall be such as to provide semiannually the dollar amount of Government facilities and material for which he is accountable in the following classifications:

(i) Land and rights therein;
(ii) Buildings;
(iii) Other structures and facilities;
(iv) Leasehold improvements;
(v) Plant equipment;
(vi) Material; and
(vii) Special test equipment.

(b) *Facilities.* The contractor's accounts covering items (i) through (v) above will be susceptible to local reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(c) *Material and special test equipment.* The contractor's property control system

shall be such as to provide the dollar value of items (vi) and (vii) above for which he is accountable.

(d) When required by the contract, the contractor will prepare, semiannually, an Analysis of Government-Owned/Contractor-Held Property Other Than Space Hardware Report (NASA Form 1018) in accordance with the instructions contained in Financial Reporting Handbook for Government-Owned/Contractor-Held Property and Space Hardware (NHB 9500.2).

(e) *Submission of reports.* Five copies of the NASA Form 1018, or a negative letter report when appropriate, will be submitted by the contractor to the cognizant property administrator so as to be received by: December 26 covering the period July 1–November 30, and by July 26 covering the period December 1–June 30. One additional copy of the report marked "advance copy" will be forwarded simultaneously to the financial management or fiscal officer of the cognizant NASA installation.

Appendix C—Control of Property in Possession of Nonprofit Research and Development Contractors

1. C.311 is revised to read as follows:

C.311 Financial control accounts and reports.—(a) *Property accounts.* The contractor's property control system shall be such as to provide semiannually the dollar amount of Government facilities and material for which he is accountable in the following classifications:

(i) Land and rights therein;
(ii) Buildings;
(iii) Other structures and facilities;
(iv) Leasehold improvements;
(v) Plant equipment;
(vi) Material; and
(vii) Special test equipment.

(b) *Facilities.* The contractor's accounts covering items (i) through (v) above will be susceptible to local reconciliation in totals and subtotals as to whether contractor-acquired or Government furnished.

(c) *Material and special test equipment.* The contractor's property control system shall be such as to provide the dollar value of items (vi) and (vii) for which he is accountable.

(d) When required by the contract, the contractor will prepare, semiannually, an Analysis of Government-Owned/Contractor-Held Property Other Than Space Hardware Report (NASA Form 1018) in accordance with the instructions contained in Financial Reporting Handbook for Government-Owned/Contractor-Held Property and Space Hardware (NHB 9500.2).

(e) *Submission of reports.* Five copies of the NASA Form 1018, or a negative letter report when appropriate, will be submitted by the contractor to the cognizant property administrator so as to be received by: December 26 covering the period July 1–November 30, and by July 26 covering the period December 1–June 30. One additional copy of the report marked "advance copy" will be forwarded simultaneously to the Financial Management or Fiscal Officer of the cognizant NASA installation.

Appendix E—Contract Financing

1. A new Subpart 5 is added to Appendix E as follows:

SUBPART 5—PROGRESS PAYMENTS BASED ON COSTS

E.500 Scope. This subpart provides uniform policies and procedures for progress payments based on costs.

E.500–1 [Reserved]

E.500–2 Exclusions. This subpart does not apply to (i) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder, or (ii) contracts for construction.

E.500–3 Contract coverage. Except as provided in E.500–2 above, this subpart applies to all contracts providing for progress payments. This subpart applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith.

E.501 [Reserved]

E.502 Obligations. Nothing in these regulations shall be construed to authorize payment of more than the amount obligated on a contract.

E.502–1 Requests for proposals. Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts.

E.503 Customary progress payments. Certain contracts may require contractor's predelivery or unbillable partial performance expenditures that will have a material impact on the contractor's working funds. These include production contracts which involve a long "leadtime" or preparatory period between the beginning of work and the first production delivery, normally involving 4 months or more for small business concerns and 6 months or more for firms which are not small business concerns. They also include some contracts for research and development and some contracts for services which have a long time period, of approximately 4 months or more for small business concerns and 6 months or more for firms which are not small business concerns, between the beginning of work and the first opportunity to bill and receive payment for a significant element of contract performance. Progress payments are customary at the uniform standard percentages of total costs (E.503–1, E.503–2), on this category of contracts and on letter contracts contemplating a definitive fixed price type of contract. Length of leadtime, or length of the time period within which billings for deliveries or for a significant partial performance cannot be accomplished, are not a factor in qualifying letter contracts and their superseding definitive contracts for customary progress payments. Percentages above uniform standard percentages are regarded as unusual, and not within the category of customary progress payments (E.505).

The long leadtime or preparatory period in these cases, and the accompanying predelivery or prepartial performance billing expenditures that may have a material impact on the contractor's working funds, and the equivalent circumstances of letter contracts and their superseding definitive contracts, are regarded as making these customary progress payments reasonably necessary. The general preference for private financing is not applicable to this class of cases. Provision for customary progress payments will be made as a matter of course when requested by contractors who are known (from experience or adequate preaward investigation to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors who are not small business concerns, e.g., contracts for less than $1 million, unless the circumstances of a group of such contracts, for contemporaneous performance, make such contracts the approximate equivalent of a larger contract that would have a material impact on the contractor's working funds. If a small business concern, and the contract involved, meet the above standards for customary progress payments, the smallness of the contract shall not deter the making of provision for customary progress payments to such small business concerns.

E.503–1 Uniform standard percentages—Contracts existing before April 1, 1968. The uniform standard percentages for progress payments on contracts existing before April 1, 1968, including all orders under or modifications of those contracts whether or not involving additional work or quantities, will remain at 70 percent of total costs, or 75 percent of total costs for negotiated contracts of small business concerns and those contracts awarded by "Small Business Restricted Advertising" or pursuant to the procedure of E.504–3 for progress payments exclusively for small business. Higher percentages for these existing contracts will continue to be regarded as unusual (E.505), and not within the category of customary progress payments, notwithstanding any contract provision. The progress payment percentage on contracts existing before April 1, 1968, shall not be increased, for whatever reason, unless authorized in conformity with the standards and procedures of E.505.

E.503–2 Uniform standard percentages—Contracts made on or after April 1, 1968. For new contracts, that is, those entered into on or after April 1, 1968, the uniform standard progress payment rate is 80 percent of total costs for firms which are not small business concerns, and 85 percent of total costs for small business concerns. This 85 percent rate applies to all new contracts hereafter awarded to small business concerns, whether or not awarded pursuant to formal advertising. These new uniform standard progress payment rates also apply to letter contracts awarded on or after April 1, 1968, and to definitive fixed-price types of contracts which supersede letter contracts on or after April 1, 1968, regardless of the date of award of the superseded letter contract. Higher percentages for new contracts will be regarded as unusual (E.505) and not within the category of customary progress payments. No percentage higher than the uniform standard progress payment rate may be offered by or in connection with any solicitation for a bid or proposal unless such higher percentage has had prior approval in conformity with the standards and procedures of E.505 for unusual progress payments.

E.503–3 Indefinite quantity contracts—Basic ordering agreements. For indefinite quantity contracts and basic ordering agreements contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production leadtime expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract or basic ordering agreement may be deemed customary if the amounts involved, and the production leadtime, will result in the substantial equivalent of the customary progress payments. Insofar as practicable, the progress payment provision of an indefinite quantity contract or basic ordering agreement shall fix a single liquidation rate to be applicable to all procurement actions under that agreement. The standards for unusual progress payments govern when progress payments are not of the customary type.

E.503–4 Administration. When progress payments are provided for in indefinite quantity contracts or basic ordering agree-

ments (E.503–3), or on separate orders or calls or their equivalent qualifying for progress payments (E.503), then, for progress payment purposes all procurement actions under the basic contract, (1) involving progress payments on a procurement action, and (2) having a single uniform liquidation rate, and (3) for payment by a single paying office may be grouped and aggregated so that the contract price, costs, payments and liquidations will be handled in the same way as if all such procurement actions constituted work under a single fixed-price type contract.

Except as provided above, for progress payment purposes, each order, call or equivalent procurement action, with progress payments, will be treated as a separate contract.

E.504 Formal advertising and small business restricted advertising. Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated below.

E.504–1 Progress payment provision in invitations for bids. When progress payments are contemplated, the invitations for bids shall include a notice of availability of progress payments as described in E.504–4. The percentage of total costs to be mentioned in these invitations for bids is 85 percent for small business concerns and 80 percent for firms which are not small business concerns.

Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed 4 months for small business concerns and 6 months for firms which are not small business concerns, or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of predelivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components).

Provision for progress payments shall also be made in invitations for bids whenever it is estimated that the procurement will involve approximately $100,000 or more and that bids are likely to be submitted by one or more small business concerns, unless the procurement is within one or more of the excepted categories set out below. Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is for quick turnover items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as "off-the-shelf" items, and standard commercial items or equivalent items not requiring substantial accumulation of predelivery expenditures.

Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (i) facilitate necessary contract financing assistance to small suppliers, and (ii) avoid the necessity for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

E.504–2 Small business restricted advertising. The above policy and standards also apply to procurement by "Small Business Restricted Advertising" and for procurement pursuant to E.504–3. When progress payments are contemplated in these cases, provision will be made for progress payment percentage at 85 percent of total costs.

E.504–3 Progress payments exclusively for small business. A stated purpose of Public Law 85–800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended 10 U.S.C. 2307 by providing that contracting agencies "may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by E.504–1 and E.504–4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small business concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (E.504–1) and the notice to bidders (E.504–4) will be supplemented by a limitation to the effect that—

"The progress payments clause will be available to small business concerns only, and will not be included for contractors who are not small business concerns."

E.504–4 Notice to bidders. Those invitations for bids that make provision for progress payments (E.504–1) should contain substantially the following notice to bidders:

PROGRESS PAYMENTS [1]

The need for progress payments conforming to regulations (Appendix E, NASA Procurement Regulation) will not be considered as a handicap or adverse factor in the award of contracts. Authorized progress payments will not be a factor for evaluation of bids. The "Progress Payment" clause attached hereto will be included in the contract awarded. Bidders do not need to request the "Progress Payment" clause. For small business concerns, 85 percent will be specified throughout paragraphs (a) and (b) of the "Progress Payment" clause. For contractors who are not small business concerns, 80 percent will be specified throughout paragraphs (a) and (b) of the "Progress Payment" clause.

E.504–5 Nonresponsive bids—Uninvited progress payment condition. To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, progress payment clauses cannot be included in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (E.504–3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

E.505 Unusual progress payment—Standards—Procedure. Progress payments based on costs, other than progress payments of the class and within the limits set forth in E.503 and E.504, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the field installations. Any contractor seeking provision for progress payments that is "unusual," within the meaning of these regulations, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the Director of Procurement with the concurrence of the Director of Financial Management.

Such cases must involve a preparatory period requiring contractor's predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates for progress payments in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

Progress payments at uniform standard rates (E.503) on letter contracts and on definitive contracts superseding letter contracts are not deemed unusual.

E.506 Accounting system and controls. The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by the cognizant audit agency) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom the cognizant audit agency has had no experience within the next preceding 12 months, the Financial Management Officer shall be notified and the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a progress payment clause in a contract. For this purpose, the services of the cognizant audit agency should be utilized to the greatest extent practicable.

E.507 Information required. The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Subparts 2 and 5 of these regulations.

E.508 through E.510 [Reserved]

E.511 Instructions for Progress Payment Clauses.

E.511–1 Contracting officer. The term "contracting officer" as used in this subpart means the contracting officer as defined in § 18–1.206.

E.511–2 Uniform standard percentages—Firms not small business—Paragraphs (a) and (b) of clause. For new contracts entered into on or after April 1, 1968 (E.503–2), with contractors which are not small business concerns, except as provided in E.511–4 and E.511–5, the figure of 80 percent stated in paragraphs (a)(1)(i), (a)(3)(i), (a)(3)(ii), (a)(4), and (b) of the clause in 7.104–35(a); and in paragraphs (a)(1), (a)(3), and (b) of the clause in 7.104–35(b) is the uniform standard and only percentage for use in those paragraphs for procurement by formal advertising (E.504–1), letter contracts, indefinite quantity contracts, negotiated price competitive contracts, and other contracts awarded without cost analysis (§ 18–3.807–2(c)) and negotiation of a profit rate.

E.511–3 Uniform standard percentages—Small business concerns—Paragraphs (a) and (b) of clause. For new contracts entered

[1] Do not use last sentence of this notice for procurements mentioned in E.504–2 and E.504–3.

into with small business concerns on or after April 1, 1968 (E.503–2), except as provided in E.511–4 and E.511–5 a figure of 85 percent shall be specified in paragraph (a)(1)(i), (a)(3)(i), (a)(3)(ii), (a)(4), and (b) of the clause in § 18–7.104–35(a); and in paragraphs (a)(1), (a)(3), and (b) of the clause in § 18–7.104–35(b). This applies to procurement by formal advertising (E.504–1), "Small Business Restricted Advertising" (E.504–2), procurement pursuant to E.504–3, letter contracts with small business concerns, negotiated price competitive contracts with small business concerns, and other contracts awarded to small business concerns without cost analysis (§ 18–3.807–2(c)) and negotiation of a profit rate.

E.511–4 Percentages for paragraphs (a)(3)(ii) and (a)(4) of clause—Contracts with negotiated profit rate. For all new contracts entered into on or after April 1, 1968 (E.503–2), involving cost analysis (§ 18–3.807–2(c)) and a negotiated profit rate, percentages lower than those prescribed by E.511–2 and E.511–3 shall be specified in paragraphs (a)(3)(ii) and (a)(4) of the clause in § 18–7.104–35(a) if a lower percentage is specified in paragraph (b) of the clause. For these contracts, the percentage to be specified in paragraphs (a)(3)(ii) and (a)(4) of the clause shall be exactly the same as the percentage used in paragraph (b) of the clause, as fixed pursuant to E.512–2.

E.511–5 Unusual percentages. For unusual progress payments (E.505), the percentage used for paragraph (a)(1)(i) of the clause in § 18–7.104–35(a) will also be specified in (a)(3)(i). For these contracts, if a percentage lower than the percentage used for (a)(1)(i) is stated in paragraph (b) of the clause pursuant to E.512–2, the exact percentage stated in (b) shall also be specified in paragraph (a)(3)(ii) and (a)(4) of the clause.

E.511–6 Other protective provisions. When deemed reasonably necessary for the protection of the Government, the clause set forth in § 18–7.104–35(a) may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or standbys of indebtedness, special bank accounts, and other protective covenants. When first article approval is required, additional protective provisions may be useful and reasonably necessary. These will be as deemed suitable to the circumstances, in the discretion of the contracting officer. By way of example, these additional protective provisions may recite that until first article approval there shall be no progress payments, or that the aggregate of progress payments shall be limited to a stated amount, or to a stated percentage (less than the percentage used in paragraph (a)(i) of the clause in § 18–7.104–35(a)) of the contract price.

E.512 Progress payment liquidation. Controlling principles for liquidation of progress payments based on costs, and for specification of a percentage in paragraph (b) of the clause (§ 18–7.104–35(a)) are set out below.

E.512–1 Ordinary method. See E.511–2 and E.511–3. The percentages specified by E.511–2 and E.511–3 for paragraph (b) of the progress payment clause (§ 18–7.104–35(a)) represent the ordinary method for liquidation of progress payments, i.e., the percentage for progress payments stated in (a)(1)(i) of the clause will also be the percentage for liquidation stated in (b) of the clause.

E.512–2 Alternate method—Contracts with negotiated profit rate. (a) See E.511–4. The ordinary method for liquidation of progress payments (E.512–1) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the parties shall agree on a percentage rate of liquidation which will (i) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i.e., recovery of the portion of costs for which progress payments have been made), (ii) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (iii) insure that unliquidated progress payments will not exceed the amount permitted by paragraph (a)(3) of the Progress Payment clause of the contract (§ 18–7.104–35(a)).

(b) For the purposes of E.512–2(a) the profit rate to be used for setting a liquidation rate at contract inception will be (i) the initial negotiated profit rate for firm fixed price contracts and contracts subject to price redetermination, and (ii) the initial negotiated target profit rate for contracts subject to incentive price revision. For the setting of liquidation rates lower than progress payment rates on contracts subject to incentive price revision, the contract price is the target price, not the ceiling price, and estimated costs are the target costs.

(c) Consistent with E.512–2(a), contracts may be amended to increase or decrease progress payment liquidation rates. If profit rates on contracts subject to price redetermination or to incentive price revision are changed by contract modification (§ 18–7.109–2), appropriate harmonizing changes to conform to E.512–2(a) will be made at the time of such modification in the stated percentage for future progress payment liquidation. Liquidation percentage rates less than those described by E.512–1 will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Except as done incident to modification of a profit rate on contracts subject to price redetermination or to incentive price revision, above, contracts may be amended to reduce the progress payment liquidation rate not more frequently than once in each period of 12 months. When a progress payment liquidation rate is changed by contract amendment, appropriate conforming changes will be made in (a)(ii) and (a)(4) of the progress payment clause of the contract, so that the new percentage specified in paragraph (b) of the progress payment clause will also be specified in paragraphs (a)(3)(ii) and (a)(4) of that clause.

(d) To support amendments reducing liquidation rates, there must be submission of satisfactory information by the contractor showing separately (i) the cost of any items that have been delivered, accepted and invoiced, (ii) the cost of work not delivered, accepted and invoiced, (iii) the estimated costs of completion, and (iv) for items that have not been delivered, accepted and invoiced, an applicable profit that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract. These amendments reducing liquidation rates will be for application only to billings for items thereafter to be delivered, and will not adjust for past delivery billings and associated progress payment liquidations.

E.512–3 Liquidation percentages. (a) For the purposes of E.512–2, the minimum liquidation rate has to be enough to recover the full amount of progress payments by way of deductions from delivery billings. The amount of expected progress payments is the product of multiplication of the total estimated contract costs by the progress payment percentage of those costs. This amount of expected progress payments, divided by the contract price, gives the minimum liquidation percentage. For contracts subject to incentive price revision, see E.512–2(b).

Appendix I—Preparation, Reproduction, and Distribution of Material Inspection and Receiving Report (MIRR) (DD Forms 250 and 250c)

1. I.201 is revised to read as follows:

I.201 Instructions. The supplies' commercial shipping document/packing list shall be used to indicate performance of required PQA actions at subcontract level. The following entries shall be made on the supplier's commercial shipping document/packing list.

Required PQA of listed items has been performed.

---------- ----------
(Date) (Signature of authorized Government representative

Typed Name and Office----------

Distribution for Government purposes shall be one copy:

(i) With shipment;

(ii) For the Government representative at consignee (via mail); and

(iii) For the Government representative at consignor.

2. I.301 is revised to read as follows:

I.301 Preparation instructions. DD Form 250 (MIRR) and DD Form 250c (Continuation Sheet) shall be prepared as follows:

(a) *General.* (i) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three-alphabetic-month abbreviation, and two digits for the day. For example, 67AUG07, 67SEP24;

(ii) The address, where required, shall consist of the name, street address/Post Office Box, city, State, and ZIP code;

(iii) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries as shown in Blocks 1, 2, 3, and 6 of the DD Form 250;

(iv) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data, shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

Block 1.—Contract number. (a) Enter the contract number as contained in the contractual document, including the applicable call/order number if any.

(b) Enter the name of the procurement office immediately below the contract number. This requirement may be satisfied by inclusion of the approved prefix used in the contract number to identify the procurement office.

Block 2.—Shipment number. (a) The shipment number is composed of a three alpha character prefix and a four-numeric or alpha-numeric serial number.

(1) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11).

(2) The first shipment under a prime contract from each "Shipped From" address shall be numbered 0001; all subsequent shipments under that prime contract shall be consecutively numbered.

a. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position followed by the three position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

A001 through A999 (10,001 through 10,999)
B001 through B999 (11,001 through 11,999)
through
Z001 through Z999 (34,001 through 34,999)

b. When this series is completely used, numbering shall revert to 0001.

(b) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (Block 16(b)(4)).

(c) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). Where the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect either to direct the subcontractor to suffix the "Z," or, on receipt of the subcontractor final shipment information, to correct the DD Form 250 (see I.305) covering the last shipment from the prime contractor's plant by addition of a "Z" to that shipment number.

Block 3.—Date shipped. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

Block 4.—B/L TCN. When applicable enter:

(a) The commercial or Government bill of lading number after "B/L"; and

(b) The Transportation Control Number after "TCN."

Block 5.—Discount terms. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(a) The contractor may, at his option, enter the discount terms on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I.306.

Block 6.—Invoice No./date. Enter the invoice number and date as described below:

(a) The contractor may, at his option, enter the invoice number and date on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I.306.

Block 7.—Page/of. Consecutively number the pages comprising the MIRR. On each page enter the total number of pages of the MIRR.

Block 8.—Acceptance point. Enter an "S" for Origin or "D" for Destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for Other if the point of acceptance is not specified in the contract.

Block 9.—Prime contractor. Enter the address.

Block 10.—Administered by. Enter the address of the procurement office cited in the contract.

Block 11.—Shipped from/code/FOB.

(a) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(b) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(c) Enter on the same line and to the right of "FOB" an "S" for origin or "D" for destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

Block 12.—Payment will be made by. Enter the address of the payment office cited in the contract.

Block 13.—Shipped to. Enter the address of the consignee as contained in the contract or shipping instructions.

Block 14.—Marked for. Enter the "Mark For" address and/or other designation as contained in the contract or shipping instructions.

Block 15.—Item No. Enter the contrast line item, subline line, exhibit line or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

Block 16.—Stock/part No./description.

(a) Enter, as applicable, for each line item, using single spacing between each line item:

(1) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix; when a number is not provided or it is necessary to supplement the number, include other identification, e.g., manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4–1, and part number; additional part numbers may be shown in parentheses; the descriptive noun of the item nomenclature and, if provided, the Government assigned management/material control code.

The following technique may be used in the case of equal kind supply items: The first entry shall be the description without regard to kind. For example: "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and stock/part number followed by the size or type in Block 16.

(2) On the next printing line if required by the contract for control purposes enter: The make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(3) On the next printing line; the FED STRIP requisition number(s) when provided in the contract or shipping instructions.

(b) In addition to entries required above, enter on the next line the following as appropriate. Where applicable to all line item numbers identified in the MIRR, enter such data only once after the last line item entry. Entries may be extended through Block 20.

(1) Enter in capital letters any special handling instructions/limits for material environmental control, e.g., temperature, humidity, aging, freezing, shock, etc.

(2) When an FSN is required by but not cited in a contract and has not been furnished by the Government, shipment may be made without such FSN at the direction of the contracting officer. Enter the authority for such shipment.

(3) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP".

(4) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I.301, Block 17 for replacement indicators.)

(5) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable Identification _____, Quantity _____, Estimated Value _____, Authority _____."

(6) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on shipment number _____, date shipped _____."

(7) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to _____, Quantity _____, Item _____, Ownership (Government/contractor)."

(8) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(9) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation. For example, the procuring installation authorizing the waiver or deviation and the identification of the authorizing document.

(10) For shipments involving discount terms, enter "Discount Expedite" in at least 1-inch outline type style letters.

(11) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer shall advise (a) the consignee of the results (approval/disapproval) and (b) the contractor to withhold invoicing pending attachment to his invoice of the approved test/evaluation results.

(12) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or ARP origin acceptance (additional copy furnished to the QAR) shall be identified as follows: Enter "Payment Copy" in approximately ½-inch outline type style letters with "Forward to Block 12 Address" in approximately ¼-inch letters immediately below. Do not obliterate any other entries.

(13) A double line shall be drawn completely across the form following the last entry.

Block 17.—Quantity shipped/received. (a) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(b) Enter a "Z" below the first digit of the quantity when:

(1) the total quantity of the line item is delivered, including variations within contract terms.

(2) all shortages on items previously shipped short are delivered.

(c) If a replacement shipment is involved, enter below the first digit of the quantity, the letter "A" to designate first replacement, "B" for second replacement, etc. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

Block 18.—Unit. Enter the abbreviation of the unit of measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parenthesis. Authorized abbreviations are listed in MIL-STD–129 (Marketing and Storage). For example: LB for pound; SH for sheet.

Block 19.—Unit price. The contractor may, at his option, enter unit prices on all MIRR copies when the MIRR is used as an invoice.

Block 20.—Amount. Enter the extended amount when the unit price is entered in Block 19.

Block 21.—Procurement quality assurance. The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality, and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

"A. Origin"—(1) The authorized Government representative shall:

a. Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin Procurement Quality Assurance and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk will be entered at the end of the statement and an explanatory note entered in Block 16;

b. Enter the date of signature;

c. Sign; and

d. Enter the typed, stamped, or printed name of the signer and office code.

"B. Destination"—(1) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(2) When PQA and Acceptance or Acceptance is at destination, the authorized Government representative shall:

(a) Place an "X" in the appropriate box(es);

(b) Enter the date of signature;

(c) Sign; and

(d) Enter typed, stamped, or printed name and title.

Block 22.—Receiver's use. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or inchecking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

Block 23.—Contractor use only. This block is provided and reserved for Contractor use.

NASA PR Supplement No. 2—Contract File Maintenance, Closeout and Disposition

1. S2.101–3 is revised to read as follows:

S2.101–3 Contract cross reference/locator file. This file consists of information (mechanized or manual) needed to assure ready location of contract case files.

2. S2.102–1 is revised to read as follows:

S2.102 Contents of files.

S2.102–1 Contract award file. The contract award file shall include (but is not limited to) such of the following as are applicable (the extent to which this listing shall apply depends upon the type of contract, dollar value, actions required, and functions assigned to the contract administration office):

(i) A copy of the approved procurement requests, or appropriate reference thereto, together with the procurement plan and other presolicitation documents;

(ii) On a negotiated procurement, any request for authority to negotiate and the original or a copy of the Determination and Findings, including Class Determination and Findings and statement of applicability;

(iii) Evidence of availability of funds;

(iv) Synopsis of proposed procurement or reference thereto;

(v) The list of sources solicited, approval of and justification for any limiting of the number of such sources (including a copy of the Justification for Noncompetitive Procurement), and a list of any firms or persons whose requests for copies of the solicitation were denied together with the reasons for denial;

(vi) Any small business or labor surplus area set-aside determination or consideration given thereto (see §§ 18–1.706 and 18–1.804);

(vii) Government estimates of contract price;

(viii) A copy of the solicitation, including a reference to the drawings and specifications or copies thereof;

(ix) The Security Requirements Check List (DD Form 254), and evidence of contractor clearance;

(x) One copy of each signed solicited or unsolicited bid, proposal or quotation received, together with an abstract thereof, including record of determination concerning late bids, proposals, or quotations (while unsuccessful bids, proposals, or quotations are a part of the official contract file, they may be maintained separately, cross-referenced to the contract file, and disposed of as provided in Subpart 5;

(xi) Each bidder's Statement of Contingent Fees including, when pertinent, Standard Form 119 (Contractor's Statement of Contingent or Other Fees) (see § 18–16.802);

(xii) A copy of each pre-award survey performed (see § 18–1.905–4) or reference to previous surveys relied upon;

(xiii) Documentation of selection of the successful contractor, including—

(A) Reasons for selection,

(B) Contracting officer's determination of the contractor's responsibility (see § 18–1.904–1), including record of authority to use Government facilities,

(C) Any Small Business Administration Certificate of Competency (see § 18–1.705–4), and

(D) Statement of the Source Selection Official;

(xiv) Records of compliance with labor policies (e.g., records of compliance checks; payrolls or certified excerpts therefrom), including documents and reports, or reference thereto, reflecting contractor compliance with equal employment opportunity policies;

(xv) All cost and pricing data submitted or used, including Certificates of Current Cost or Pricing Data (see §§ 18–2.102–1(b), 18–3.501(b)(23), 18–3.807–3, and 18–3.807–4) or a copy of the waiver of submission of cost or pricing data;

(xvi) Packaging and transportation data or analysis;

(xvii) Price analysis;

(xviii) Audit reports or reasons for waiver;

(xix) A full record of negotiations, including but not limited to—

(A) Participants;

(B) Dates of meetings or telephone calls;

(C) Government-furnished materials or facilities provided;

(D) Subcontracting;

(E) Terms and conditions agreed to;

(F) Deviations, if any, from prescribed contract clauses;

(G) Technical recommendations; and

(H) A record of price negotiation (see § 18–3.811);

(xx) Justification for type of contract used (see § 18–3.403 and NPC 401);

(xxi) Any exceptions or exemptions from the Buy American Act or appropriations act restrictions (see Part 18–6);

(xxii) Required contract approvals;

(xxiii) Verification of requirements;

(xxiv) Notice of award;

(xxv) A signed or authenticated copy of the contract or award and all contract modifications, together with signed or official record copies of documents supporting these modifications;

(xxvi) Synopsis of award or reference thereto (see § 18–1.1005–1);

(xxvii) Notice to unsuccessful bidders (see § 18–2.408) or quoters or offerors;

(xxviii) A copy of Individual Procurement Action Report (NASA Form 507) (see § 18–16.901);

(xxix) Bid bond (Standard Form 24), performance and payment bonds (Standard Forms 25 and 25–A), or other bond documents, or a reference thereto, and notices to sureties, when appropriate;

(xxx) Record of any overtime premium approvals granted at time of award;

(xxxi) Documents requesting and authorizing modification in the normal delegation of contract administration functions and responsibility (see Subpart 18–51.3);

(xxxii) Approvals or disapprovals of waivers or deviations;

(xxxiii) Rejected engineering change proposals;

(xxxiv) Patent, invention, and copyright reports or reference thereto (including invention disclosures);

(xxxv) Documents or data appropriate for renegotiation purposes to the extent not enumerated elsewhere in this listing (see § 18–1.319);

(xxxvi) Document denoting completion of the contract, including Contract Administration Completion Record (DD Form 1593), Contract Completion Statement (DD Form 1594—NASA Edition), and Contract Closeout Check List (DD Form 1597—NASA Edition) when applicable;

(xxxvii) Documentation regarding termination actions, including—

(A) Recommendation or request to terminate together with reason for terminating, and, in the case of major contracts, plans therefor;

(B) Review board actions accomplished by the procurement office;

(C) Copy of termination notice;

(D) Documents supporting termination actions taken when terminated for default, such as notice of possible termination (see § 18–8.602–3(b)), show cause letter and reply, and record of conferences, if any;

(E) Record of repurchase, including written demand to contractor for excess costs (see § 18–8.602–6);

(xxxviii) Cross references to other pertinent documents which are filed elsewhere because they pertain to more than one contract or to the contractor generally.

(xxxix) Correspondence, messages, memoranda of calls and visits, and additional documents on which action was taken or which reflect actions pertinent to the contract;

(xl) A chronological list (with inclusive dates of responsibility), to be kept current, of all contracting officers;

(xli) Equal opportunity representation;

(xlii) Certification nonsegregated facilities;

(xliii) Evidence of legal review where required, and copy of comments made by legal counsel; and

(xliv) Any additional documents considered necessary to present a complete résumé of the contract action.

3. S2.401 and S2.402 are revised to read as follows:

S2.401 Review of contract case and cross reference/locator files. Upon determination of contract completion under the procedures outlined in Subpart 3 of this supplement, each office shall review all files pertaining to the individual contract as follows:

(i) *Duplicate or working contract case file*—remove any original or official file copies of documents and place them in the appropriate "official" file; destroy immediately any remaining material, or segregate and mark it for early disposal;

(ii) *Official contract case file*—remove folder for completed contract from the active file series, mark each folder or folder tab "Completed (Date)" and place folder in completed (inactive) contract file series; separate series should be established for contracts of $2,500 or less and for contracts of more than $2,500, to facilitate later disposal; and

(iii) *Cross reference/locator files*—remove any contract cross-reference data forms relating to the completed contract, mark each "Completed (Date)", and place them in completed (inactive) cross-reference/locator file series for later disposal.

S2.402 Review of contractor general files. Each office shall review contractor general files at least once annually and:

(i) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized in Subpart 5.

(ii) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contractor file for later disposal, and immediately dispose of routine documents as authorized in Subpart 5.

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